

**DECLARATION OF SUNSET PARK  
PLANNED COMMUNITY**

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Prepared by: Steven I. Goldstein  
Box to: Patla, Straus - #35

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This Declaration of Sunset Park Planned Community is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2007, by Iris Properties Investments, LLC, a North Carolina limited liability company, for itself and the other Owners (as defined below).

WHEREAS, all capitalized terms have the meanings set forth in Section 1 below; and

WHEREAS, Developer is the owner of the Property, upon which certain improvements have been or will be made, as hereinafter set forth; and

WHEREAS, Developer owns (or shall own) the Additional Property which may hereafter become part of the Development, as provided below; and

WHEREAS, Developer intends to develop the Property (and possibly some or all of the Additional Property) as the Development, ultimately dividing the same into the Common elements and Land Parcels, as the same are shown on the Phase 1 Plat, or as they may be shown on the Plats recorded hereafter, with each of the Land Parcels containing either a Home or Subdivision Lot improvements, in accordance herewith, and with the Development only to be used as permitted hereby; and

WHEREAS, the Development will be operated and managed by the Association, as set forth herein; and

**WHEREAS, the Association, which is responsible in accordance herewith for the care and maintenance of the Common elements, will be controlled by the Developer through the Release Date; and**

**WHEREAS, the Developer has a right of first refusal to the extent set forth below; and**

WHEREAS, Developer intends for the Development to be pursuant to a general scheme of development which will provide benefits to all Owners of property therein; and

WHEREAS, Developer intends to be able to convey and/or demise the Units to purchasers and/or tenants; and

WHEREAS, Developer intends hereby to establish, by this Declaration, a plan for the individual ownership of the Units, and the fee simple ownership by the Association of the Common elements, subject to the provisions and limitations herein.

NOW, THEREFORE, in consideration of the above, Developer hereby declares that the following limitations, restrictions and conditions shall affect, bind and encumber the Property as to the uses to which the same may be put, that this Declaration shall constitute covenants to run with the Property, and that the same shall bind the Owners, at all times hereafter.

1. **Definitions:** The following terms shall have the meanings set forth below:

a. "Act" - The Planned Community Act (N.C.G.S. 47F) in force in the State of North Carolina, as amended from time to time.

b. "Additional Property" - Any land described in the Deed and shown on a Plat, other than the part thereof shown on the Phase 1 Plat; as well as any land adjoining the Deed tract which is (then) owned by Developer. At such time as other Plats are recorded and the Declaration amended, if required hereby, the portion(s) of the Additional Property shown thereon shall become part of the Property.

c. "Architectural Review Committee" - The committee of the Association to review and determine whether a proposed improvement may be constructed. Prior to the Release Date, the Architectural Review Committee shall be the Developer (or its designees). Subsequent to the Release Date, the Directors (or their designees) shall be the Architectural Review Committee.

d. "Assessments" - Those amounts levied and so declared (as regular or special Assessments), from time to time, by the Association against the Owners, in order for the Association to be able to pay the Common costs, the Subdivision Lot costs, and the Townhome costs; together with all late charges, costs and attorneys fees levied by the Association against any Owner resulting from any failure of an Owner to timely pay.

e. "Association" - That North Carolina non-profit corporation entitled "Sunset Park Development Association, Inc."

f. "Board" - The Board of Directors of the Association, as elected or appointed from time to time, in accordance with the Bylaws.

g. "Bylaws" - The Bylaws of the Association, initially as set forth in Section 11 of the Declaration, but as the same may be amended thereafter.

h. "Common costs" - The sum of the amounts expended by the Association to repair, maintain, replace, pave, stripe, insure (liability only), remove snow from roads, landscape, mow, keep lit and otherwise care for and keep in reasonably good and sightly condition, all the Common expense elements.

i. "Common elements" - All of the Property, other than the Units and the Flats, but

subject to the Developer's Reservations.

- j. "Common expense elements" - Items (i) through (iii) of the Expense elements.
- k. "Condominium Act"- Chapter 47C of the North Carolina General Statutes.
- l. "Control Period" - The period prior to the Release Date.
- m. "Control Rights" - The extraordinary rights of the Developer, which expire on the Release Date, to appoint two (2) of the three (3) Directors to the Board, and to cast one more vote on matters voted upon at Owner's meetings by Owners than the number of such Units that have been sold to that time (i.e. prior to the Release Date, Developer has majority control).
- n. "Date" - The date the Declaration is first recorded in the Buncombe County Registry.
- o. "Declaration" - This Declaration of Sunset Park Planned Community, as the same may be amended hereafter in accordance herewith.
- p. "Deed" - The deed recorded in Buncombe County Deed Book 4200 at page 1834.
- q. "Developer" - Iris Properties Investments, LLC, a North Carolina limited liability company, and any person or entity hereafter specifically designated, in writing, by Iris Properties Investments, LLC (or its successors) as the Developer hereof.
- r. "Developer's Reservation(s)" - Developer's reservation in any deed from Developer to the Association of the rights of Developer to construct additional Units, infrastructure or other items on the parcel being conveyed by Developer; and, in addition the rights to convey such additional Units, from time to time. It shall be conclusively deemed that all Units conveyed by Developer to Owners hereafter are validly located; and that the Developer has, and has conveyed to Owners, valid, fee simple title to said conveyed Units. Developer shall, upon sale of the last Unit pursuant to a specific Developer's Reservation, acknowledge the same therein. Thus, the estate in the parcel conveyed to the Association by Developer, if so stated therein, may be a fee simple defeasible (not fee simple absolute), with the Developer having the right to, in effect, retain and/or retake portions thereof for conveyance as Units or easements, prior to the said Developer's said acknowledgement. Once the Flats Declaration is recorded, Developer may not affect any of the property subject thereto in any manner contrary to the provisions of the Flats Declaration.
- s. "Development" - That planned community to be known as Sunset Park Planned Community (or Development), which is presently comprised of the Property, which may have the Additional Property added hereafter, as provided in this Declaration, and which is established by the Declaration, as the same may be amended hereafter.
- t. "Director(s)" - The three members of the Board elected by a vote of a Majority of Owners, with two (2) of them (or two (2) votes) selected by Developer during the Control Period, and the third by the majority vote of the Owners of Units.
- u. "Easement(s)" - The non-exclusive easements and rights of Developer and all other Owners, and those otherwise authorized by the Declaration, to use the Common elements in

common with all other permitted users thereof, in accordance with the Declaration, subject to the Developer's Reservation(s).

v. "Entrance(s)" - The area(s) of the Development on Baird Street, Sunset Drive and/or Skyview Place which leads into the Development and which may contain an identification sign for the Development, the lighting fixtures thereof and the immediately adjacent landscaping features, as in existence from time to time.

w. "Expense elements" - Those portions of the Common elements which require, from time to time, expenditures to be made pursuant hereto. The Expense elements include (i) the Development's Entrance or Entrances, (ii) the Development's green areas and parks and improvements or structures (if any) located on land portions of the Common elements, which are intended to be of general benefit and usage by all Owners, (iii) the Entrance road and any other roads within the Development, and (iv) those portions of Townhomes which require expenditures, from time to time, and which are only applicable to Townhomes.

x. "Flats"- The Flats at Sunset Park Condominium, inclusive of all Flats Property.

y. "Flats Assessment"- The amount to be assessed, from time to time, by the Association, to the Flats Association.

z. "Flats Association"- The Flats at Sunset Park Association, Inc.

aa. "Flats Declaration"- The Declaration of Condominium of The Flats at Sunset Park Condominium.

bb. "Flats Owner"- The Owner of a Flats Unit.

cc. "Flats Property"- The real property defined as the Parcel in the Flats Declaration.

dd. "Flats Unit"- A condominium Unit in the Flats.

ee. "Holder(s)" - An institutional (a commercial lender such as a bank, mortgage bank, savings and loan association, insurance company, or financial services company) lender holding a first lien deed of trust on a Unit and/or a Flats Unit.

ff. "Home(s)" - A single family residence, which may be a Flats Unit or a Townhome, and which may be constructed by, for, or pursuant to obligations to, Developer, on a Land Parcel. While a Unit may be sold by Developer prior to the completion of the Home, there must be an obligation to complete one thereon in accordance with the design guidelines and limitations established by Developer and/or the Association, and the completed Home shall be a part of the Unit.

gg. "Home Office Use" - The use of a Unit, as a minor adjunct to such Unit's primary use as a residence, for office purposes, so long as no visitation by clients or customers occurs and such use does not increase traffic in the Development in any material (as determined by the Association) way.

hh. "Limited common element(s)" - Those portions (if any) of the Common elements which, by their nature, are reasonably usable by less than all of the Units and/or are so designated on a Plat as being appurtenant to one or more (but less than all) Units.

ii. "Majority of Owners" - One more than one-half of the number of votes of Owners of Units, but subject to any extraordinary voting rights of Developer during the Control Period (e.g. If there are nineteen (19) Units and the total number of Owners, other than Developer, is fifteen (15), the Majority of Owners during the period prior to the Release Date is sixteen, with Developer having sixteen (16) votes).

jj. "Owner(s)" - Being the Developer and any and all other persons or entities which now or hereafter own a Unit or Land Parcel, and such parties heirs, successors and assigns, but excluding Holders and persons or entities only holding lien rights or easement rights.

kk. "Phase 1 Plat" - That plat recorded in Buncombe County Plat Book \_\_\_\_\_ at page \_\_\_\_\_.

ll. "Plat(s)" - The Phase 1 Plat and any plats hereinafter recorded by or for the Developer that show all or part of the Property and/or the Additional Property.

mm. "Property" - At present, that tract of land which is shown on the Phase 1 Plat. Upon the recording of other Plats by Developer, the portion of the Additional Property shown thereon shall become a part of the Property and the Property, as it exists, from time to time, shall comprise the Development.

nn. "Release Date" - The first to occur of the following: (i) the day that is twenty (20) years from the Date, (ii) the day that Developer owns none of the Development, or (iii) the day the Developer releases its Control Rights in a document signed by the Developer and delivered to the Board.

oo. "Land Parcel(s)" - The land portion of a Unit, shown as a numbered parcel on the Plats, and which may, but need not, be a Subdivision Lot, excepting and reserving therefrom the non-exclusive easements and rights of way over and across the Land Parcels for the purpose(s) shown on the Plat. All the easements and rights of way shown on the Phase 1 Plat are, except as limited on the Phase 1 Plat, for pedestrian, vehicular and utility access purposes are Common elements and are part of the Easements.

pp. "Unit(s)" - That real property consisting of a Flats Unit, or a Land Parcel, the Home thereon and the Easements.

qq. "Rules and Regulations" - The Rules and Regulations set forth in Section 10 of the Declaration, as the same may be modified hereafter.

rr. "Subdivision Lot(s)" - The numbered Land Parcel shown on a Plat as Lots 1 through 11, inclusive, or such other numbered parcels of land shown on a Plat (as Lots) which are for conveyance by Developer, other than to the Association, and each of which is not to have a Townhome located thereon.

ss. "Townhome" - A Home which shares a party (or near party) wall with an adjacent Home, is a dwelling type customarily considered to be a townhome-type residence, and which is the Home portion of a Unit with a Townhome.

tt. "Townhome costs" - Those amounts expended by the Association to repair,

maintain, replace, inspect for and treat against termites, and keep in generally good and sightly condition, the Townhome expense elements.

uu. "Townhome expense elements" - Item (iv) of the Expense elements, which are intended to directly benefit only the Townhome Unit Owners.

vv. "Townhome Unit" - That real property consisting of a Land Parcel, the Townhome thereon, and the Easements. A Townhome Unit is, thus, a Unit with a Townhome and this definition is used for ease in understanding.

2. **Establishment:** Developer, in order to establish the Development as a Planned Community hereby initially divides it into the following separate freehold estates:

a. Four (4) Flats Units to be known as Units 1 through 4. These Units shall only be conveyed in compliance with the Flats Declaration and the Declaration

b. Eleven (11) Subdivision Lots shown on the Phase 1 Plat, and to be known as Units 5 through 14 and Unit 19; each consisting of (i) a like numbered Land Parcel, (ii) the Home thereon (or to be constructed thereon), and (iii) the Easements. The said Units shall only be conveyed subject hereto.

c. Four (4) Townhome Units to be known as Units 15 through 18, but if the Phase 1 Plat does not show all, the remaining land may, at Developer's option, be subsequently be subdivided into less or more Land Parcels, on each of which a Townhome shall be (or has been) located.

d. The Common elements, which are for the use and benefit of all of the Owners, subject to the Developer's Reservation, the restrictions and limitations set out herein, the Easements, or as limited in the Bylaws or in the Rules and Regulations. The Common elements (then existing) shall be conveyed to the Association prior to the conveyance of the first Unit, in accordance herewith; and thereafter, from time to time, Common elements shown on Plats shall be conveyed to the Association, subject to a Developer's Reservation, if such Reservation is contained therein.

3. **Common Elements:** Every Owner shall have the non-exclusive right of use and enjoyment of the Easements, which shall include for each Owners' benefit, inter alia, ingress, egress and regress to and from the Land Parcels over the streets and walkways of the Development to all adjacent streets, the use of any parks established as a part of the Common elements and the right to park vehicles on areas so designated therefor, all subject, however, to the following provisions and conditions:

a. The right of the Association to manage and control all the Common elements, including charging reasonable admission and other fees for the use of any recreational or other facilities situated upon, or being part of, the Common elements or otherwise under its control; regulating, locating, relocating and directing access routes in the Development; designating parking areas, establishing rules therefor and granting easements therein; and performing all other actions in furtherance thereof and in furtherance of all other matters with respect to the Common elements or as otherwise are reasonably necessary to carry out the obligations of the Association hereunder;

b. The right of the Association to dedicate or transfer all or any part of the Common elements to any public agency, authority, or utility upon such terms as are approved by a Majority of Owners;

c. The right of the Association to declare portions of the streets, walkways and parking areas of the Development to be of benefit to some (but not all) of the Units and/or to have some or all the streets in the Development be public roads maintained by the State of North Carolina or the City of Asheville, and the balance be private streets and walkways maintained by the Association;

d. The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of constructing, maintaining, repairing, replacing and/or improving the Common elements; and in aid thereof, to mortgage and grant liens and encumbrances upon the Common elements, except that the right of any such mortgagee or purchaser at a foreclosure sale or sale in lieu thereof shall be subject to this Declaration, the Easements and rights of others in the Common elements created herein;

e. The right of the Association to limit the number of guests of Owners as to the use of any (none promised herein) recreational facilities situated upon, or being part of, the Common elements;

f. The right of the Association to suspend an Owner's voting rights and an Owner's right to use any of the recreational or other Common elements (other than Unit access) for any period during which any Assessment against such Owner's Unit, remains unpaid, or during the pendency of a breach by such Owner or anyone occupying such Owner's Unit of the Rules and Regulations;

g. The rights of Developer, prior to the Release Date, to utilize and occupy, without charge, some or all of any of the Common elements as a sales office, business office or otherwise;

h. The rights of Developer and Association, as available to them, to the full extent provided by the Act. It is Developer's intent that all of the Declaration be in full compliance with the Act. If anything contained herein is in violation to the provisions of the Act, it is void ab initio; and anything herein which the Act allows to override the Act, to the extent the same is different from the Act, shall override it;

i. The Flats are a part of Sunset Park, but any matters set forth herein with respect thereto which are in conflict with either or both of the Flats Declaration or the Condominium Act shall be void ab initio, as the governance thereof shall never be contrary to either the Flats Declaration or the Condominium Act. It is Developer's intent for the Declaration and the Flats Declaration to be read in such a manner as will enable them to function together without issue. Such documents shall be liberally construed to give effect thereto to the extent reasonably feasible. All matters provided for in the Flats Declaration shall be controlled thereby.

4. **General Matters:** Developer, by this Declaration, and all other Owners, by their acceptance of a deed to a Unit, covenant and agree as follows:

a. That the Common elements shall remain undivided, other than as a result of Developer exercising rights under the Developer's Reservations, and no Owner shall bring any action for partition (or sale in lieu thereof), it being agreed that this restriction is necessary in order to preserve the rights of the Owners;

b. That the Land Parcels shall only be occupied and used as single family dwellings for residential purposes, which may have a Home Office Use; and which may only be occupied and used in accordance with the provisions of this Declaration, including the Bylaws and the Rules and Regulations, and for no other purpose; provided, however, that Developer has the right at all times prior to the Release Date to use Units owned or leased by it as a sales office(s) and/or for model or demonstration purposes;

c. That no Owner shall be deemed to own any pipes, wires, conduits, or other public utility lines or public convenience facilities running through a Unit which are utilized for or provide service to more than one Unit, and that each Unit is subject to an easement in favor of Developer, the Association and their designees for location, replacement and maintenance of same;

d. That every Subdivision Lot shall be subject to such setbacks, easements and reservations as may be shown on any Plat showing a Subdivision Lot, with no structure to be erected in violation thereof, and no Land Parcel may be subdivided without the prior written consent of the Developer prior to the Release Date and of the Association subsequent thereto;

e. That unless otherwise consented to by the Architectural Review Committee, no dwelling constructed on a Subdivision Lot shall have less than one thousand one hundred seventy two (1,172) square feet of enclosed, heated living space within the dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, storage areas, attics and basements. No structure on a Subdivision Lot may exceed three (3) stories above basement level, as measured from ground elevation. This Section 4.e. is not applicable to the Flats;

f. That Developer, prior to the Release Date and the Association thereafter, shall have the right to waive unintentional violations of the setback lines, minimum square footage requirements and any other such numerical limitations set forth herein, so long as such waiver does not exceed ten percent (10%) of the minimum setback/residence size, etc. If a violation exceeds said ten percent (10%), then the same may be waived only with the consent of the applicable Architectural Review Committee, and a Majority of all Unit Owners with like type of Unit, i.e. Townhome to Townhome and Subdivision Lot to Subdivision Lot;

g. That if any portion of the Common elements encroaches upon any Unit as a result of the construction, repair, shifting, settlement or movement of any portion of any improvements on the Property or of any of the Common elements, a valid easement for the encroachment thereof and for the maintenance of same, shall and does exist. In the event any such improvement is partially or totally destroyed, and then rebuilt, minor encroachments of parts of the Common elements and facilities due to reconstruction shall be permitted and a valid easement for said encroachment and the maintenance thereof should exist. No encroachment may remain if it constitutes an unreasonable burden on a Unit;

h. That no wall which serves as a party (or near party) wall between any two (2) structures shall be altered, modified or rebuilt without making adequate provision for the care and protection of both structures served. All walls between Townhomes which can be reasonably inferred to be intended to be equally located on adjoining Land Parcels shall be deemed to be so located and equally owned and controlled by the two respective Owners, regardless of whether the said wall is actually located on more than one Land Parcel. While the faulty location of the wall shall not alter the boundary line, an easement for its encroachment (and the encroachment of any part of a Unit which encroaches on an adjoining Unit in a non-material way) shall exist;

i. That the Association (and its assigns) shall have, at all times hereafter, an easement for the installation, location, reinstallation, relocation, repair and maintenance of utility lines, five feet along all side interior Land Parcel lines and ten (10) feet along all rear Land Parcel lines (none to encroach, notwithstanding the foregoing, on any Townhome), and such locations as may be shown on the Plat, or otherwise as set forth herein. Notwithstanding the foregoing, if a Land Parcel is to be subdivided, it must be in accord herewith, and said utility line easement is relocatable by the subdividing party so that the easement is adjacent to the revised lines and the former lines. In addition, the Association may preserve

views for any structure within the Development including the right to reasonably top or trim trees or shrubbery, which obstruct the natural view of the surrounding areas from structures erected within the Development. While the Association must reasonably seek to provide advance notice to any Owner whose Land Parcel is to have trees topped or trimmed, such notice is not a precondition to the Association causing such topping or trimming to occur;

j. That the Developer retains a permanent easement over and across the Common elements and over and across the Land Parcels, including but not limited to, the right to change grades and swales to properly control water run-offs, the right to utilize portions thereof to afford access to the remainder of the Property, the Additional Property, or to such adjacent properties as may now or hereafter be owned by the Developer or to provide utility services and ingress, egress and regress thereto; and, the right to grant reasonable easements to other persons, firms and corporations over and across the Common elements and Units in furtherance of the foregoing;

k. That the Developer further retains the right to subject the Property to a contract with any power company providing electric power to the Development for the installation of underground electric cables and/or area lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such power Company by each Owner directly or as a component of the Assessment;

l. That an Owner, by virtue of being an Owner, is automatically a member of the Association and shall remain a member of the Association until such time as such person's ownership of the Unit ceases for any reason, at which time such Owner's membership in the Association shall automatically cease. No Owner is exempt from liability to pay Assessments by waiver of the use of enjoyment of any of the Common elements, or by the abandonment of the Owner's Unit;

m. That the administration and maintenance of the Development, including the sale, lease, use or encumbrance of any Unit, must be in accordance with the provisions of this Declaration, the Bylaws and the Rules and Regulations, as the same may now exist or may be hereinafter enacted by the Association. The failure of an Owner or any occupant of a Unit to comply with all the foregoing be grounds for an action to recover damages, including fines to the full extent permitted by the Act, and/or injunctive relief brought by the Association or by any other Owner against the Owner of the Unit from which the failure to comply stems. Notwithstanding the foregoing, the Association shall have the exclusive right for the period of thirty (30) days after it has been notified of a claimed failure by an Owner to comply herewith, to commence proceedings against the offender. If the Association so commences and prosecutes, no Owner shall maintain an action arising out of the same failure to comply. Should any Owner claim a right of action against the Association, such Owner shall provide notice of same to the Association, and it shall have a reasonable time for it to cure such claimed default;

n. That except for the purposes of amending this Declaration to add additional, adjacent land to the Development upon the recording of a new Plat, which Developer may do at any time prior to the Release Date without joinder of anyone else, this Declaration shall not be amended unless a Majority of Owners and Holders vote affirmatively to effect such amendment (giving full effect to the Control Rights of Developer). Any Unit which is encumbered by a Holder's deed of trust shall be deemed to have voted against an amendment hereof, unless both the Unit's Owner and its Holder affirmatively vote therefor. Prior to the Release Date, no amendment hereto may be adopted without the approval of Developer;

o. That no structure of any kind or other externally visible item (including, but not limited to, plantings, finish colors and statuary) shall be placed in, on or about the Development by anyone other

than Developer prior to the Release Date, unless the Architectural Review Committee provides its express written consent thereto. Subsequent to the Release Date, no structure or other externally visible item (including, but not limited to, plantings, finish colors and statuary) shall be placed on the Development by anyone other than the Association, without the prior express, written, permission of the Architectural Review Committee, which may be given or withheld for any reason or no reason. Without limiting what the Architectural Review Committee shall have a right to require to be provided to it, all site plans, specifications, proposed contractors, finishes, structures, parking plans, recreational equipment, vegetation and fencing requires the prior written consent of the Architectural Review Committee, which may, from time to time, provide design guidelines and forms in furtherance of its mission. Subject to the Association's right to require the removal of plantings it considers unsightly, an Owner may effect plantings in the Owner's Limited common element area, if any is shown on a Plat to exist in favor of an Owner. No mobile home, doublewide, tent, shack, detached garage, other outbuilding or other temporary structure may at any time be used as a residence, either temporarily or permanently. The form of window treatments and the color of any lining thereof which are externally visible are both under the Association's control, and may be prohibited or required modified by the Architectural Review Committee;

p. That each Home Owner is responsible to keep the exterior and structure of the Home in reasonably good repair, maintenance and condition, including but not limited to the roof, structure, siding, finishes and all party walls and facilities. Upon the failure of any Home Owner to comply with the foregoing, the Association shall, at the Home Owner's expense, keep, at the Home Owner's expense, the said portions of the Home not being properly repaired, maintained and replaced by its Owner, in reasonably good repair, maintenance and replacement. No Owner shall repair, paint, replace or otherwise affect the Home or its Land Parcel, unless expressly authorized by the Association. In the event of such Owner's failure, the Association may assess, and the said Home Owner shall pay, the reasonable additional cost resulting from said failure;

q. That all external painting, staining and other maintenance, replacement and repair to keep the exterior portions of all Units, in reasonably slightly condition, as determined by the Architectural Review Committee, shall be promptly performed by the Unit's Owner, but always subject to the control and direction of the Association. The Association has, and shall have, an easement over and across all portions of the Units in order for the Association to repair, maintain, and replace at the Unit Owner's expense, the exterior of the Homes, and Easements over all Land Parcels for the purposes set forth herein. The Association may require a uniform color scheme or schemes throughout the Development. The Association shall keep the Land Parcel grounds and the green areas of the Common elements cut, trimmed, pruned, planted and generally in reasonably slightly condition. Other than within the Home site approved by the Architectural Review Committee, no Owner, other than Developer and the Association, shall remove any vegetation having a trunk diameter of six (6) inches or more at a point within four and one half (4 ½) feet above ground level, unless such vegetation has been declared dead or diseased by the Architectural Review Committee;

r. That no activity shall be conducted or permitted to exist on any part of the Development which is reasonably deemed to constitute a nuisance by Developer, prior to the Release Date, or by the Association at any time. Any Owner or anyone occupying an Owner's Unit which is deemed in violation of the foregoing by the Developer or the Association shall cease and desist immediately upon notice thereof from Developer or the Association;

s. That all Owners are responsible to keep their Homes and Subdivision Lots in slightly condition and in reasonably good repair, maintenance and replacement, except for those obligations specifically undertaken herein by the Association. Except for Flats Owners all Owners must, at all times,

maintain, to the full one hundred percent (100%) replacement value, hazard insurance, with All Risk replacement coverage, with a deductible no greater than Two Thousand Five Hundred Dollars (\$2,500), to replace the Home and any other improvements on the Owner's Unit in the event of any damage to or destruction of the improvements on a Land Parcel by fire or other casualty. A copy of such insurance policy or the Certificate therefor shall be provided to the Association by the Owner at all times, and the Association must be a named Certificate holder to assure the compliance herewith by an Owner. An Owner's failure to keep such insurance in force and to provide a copy of the Certificate to the Association is a material breach hereof entitling the Association to place such insurance at the Owner's expense. All Owners must promptly restore any damaged improvements in accordance with the design criteria of the Architectural Review Committee and other reasonable regulations established by the Association, from time to time, in connection therewith. The Association may coordinate and control the restoration or replacement of the damaged portions. The Association and the Unit Owner shall reasonably cooperate in furtherance of the matters set forth in this Subsection, and all insurance proceeds arising from such damage or destruction shall be used in furtherance thereof.

5. **Assessments:** Assessments shall be made, kept and used as follows:

a. At the earlier to occur of (i) the conveyance of a Unit by Developer or (ii) the occupancy of a Home by Developer, or the tenants thereof, the regular monthly Assessment thereon shall be due. Developer has no obligation to pay Assessments on Units owned by it until at least one of the foregoing events has occurred, but Assessments shall be based on a per Unit (not per Unit sold) budget; and if the Assessments against Unit Owners obligated to pay the same is insufficient to pay the budget costs, the Developer shall have the option to either pay the regular Assessment on each Unit owned by it or to pay the shortfall between the amount required to satisfy Association obligations and the amounts of the Assessments against Owners obligated to pay the same. At the closing of a sale by Developer of a Unit for the first time, in addition to the first regular monthly Assessment, the purchaser (or Developer if an unsold but occupied Unit) shall pay an amount equal to two months of the regular monthly Assessment against such Unit to the Association, to be deposited as a portion of the Association's reserve. From and after the date that the first regular monthly Assessment is due on a Unit, the said Unit's Owner shall be obligated to pay Assessments on or before the first day of each successive month (or quarter, if so established by the Association thereafter). If the date the first regular Assessment is due is not the first of a month, the Assessment shall be appropriately prorated;

b. Except as otherwise set forth herein, each Owner shall timely pay the Association all Assessments levied against such Owner by the Association. All Assessments made pursuant hereto shall be a charge and lien upon the Unit against which the Assessment is made. Each Assessment shall also be the personal financial obligation of the person, or persons, who was, or were, the Owner or Owners, of such Unit at the time the Assessment became due. The personal financial obligation for delinquent Assessments shall not pass to successors in title to any Unit, unless expressly assumed by such purchaser; however, the same shall be and remain a lien upon the Unit until satisfied, except as may be herein otherwise provided;

c. All Owners shall be Assessed an amount that will be sufficient for the Association to pay the Common costs. Townhome Owners shall also be Assessed an amount that will be sufficient for the Association to pay the Townhome costs. If any Owner fails to keep the Unit insured as required herein, the Association may, after providing written notice to such Owner, purchase such insurance on behalf of such Owner, and the cost thereof shall be a part of the Assessment due from that Unit's Owner;

d. Garbage pickup shall, unless provided by the City of Asheville at no charge, to the extent available to the Association by licensed trash haulers, be contracted for by the Association, but the

cost of same shall not be a component of the Assessment if the Owners shall be individually billed by the trash hauler. All Owners shall comply with the rules established by the Association for garbage storage and pickup;

e. Each Unit shall be Assessed equitably, as reasonably determined by the Association, from time to time, so that all Units of like type and size shall bear relatively the same Assessment, with larger Units bearing a larger Assessment than smaller Units, etc., but the Association, in its sole discretion, may limit the number of type and size designations in order for ease in handling;

f. Any Assessment, which is not paid when due, shall be delinquent. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association, or its agents, the right and power to file liens and to bring all actions against such Owner personally for the collection of such Assessment by methods available for the enforcement of contractual liabilities and liens, including lien foreclosure by an action brought in the name of the Association. The lien provided for in this section shall be in favor of the Association and shall be for its benefit and thus (indirectly) the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid at any foreclosure sale and to acquire and hold, lease, mortgage and convey any Unit, and to subordinate so much of its right to such liens as may be necessary or expedient;

g. No sale or transfer of any Unit shall affect the Assessment lien. However, the sale or transfer of a Unit pursuant to a mortgage or deed of trust foreclosure or any formal, legal proceeding in lieu thereof, shall extinguish the lien (but not the personal obligation of the previous Owner) of the Assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Unit and its Owner from liability for all Assessments thereafter becoming due. The extinguishment of said lien shall permit the allocation of the unpaid Assessment (or so much as is necessary) as a common expense of all other Owners; and

h. If more efficient and approved by the Flats Association, the Flats may be managed by the Association, and the assessments thereof paid by the Flats Association to the Association or directly to the Association.

**6. Future Development:** While Developer intends the Development to contain a number of Units, it reserves the absolute right to construct a different number thereof. While Developer may convey any Common elements not previously conveyed by them to the Association at any time, any remaining Common elements then shown on the Plats (but unconveyed) shall be conveyed to the Association not later than the first to occur of (i) Developer causing the recording of a Plat or an amendment hereto acknowledging that no further Units are to be established, or (ii) the end of the Control Period. The conveyance of Common elements shall be subject to the Easements and Developer's Reservation. If any Common elements are shown on Plats recorded thereafter, Developer shall, within a reasonable time, convey such Common elements to the Association, subject to the Easements and the Developer's Reservation. The Common elements may be encumbered at the time of conveyance, so long as the Declaration, the Easements and the Developer's Reservation are superior to the encumbrance. Prior to the conveyance of the Common elements shown on a Plat to the Association, Developer shall be responsible for the maintenance of said Common elements, and each Owner shall have a non-exclusive, easement for ingress, egress and regress over any street shown on any Plat, to provide access and to and from the Owner's Home or Subdivision Lot and the public roads. Developer retains and reserves the Developer's Reservation, the rights of access and use of and over all Common elements, any other easements shown as appurtenances on any Plat, the rights set forth herein, the right to develop the Additional Property, from time to time, in order to complete the Development, and all other rights required in furtherance thereof.

7. **Registered Office and Agent:** Alan Laibson, whose address is 8 Skyview Place, Asheville, NC 28804, is hereby designated as initial agent for the service of process of Developer and Association pursuant to the General Statutes of North Carolina. Such appointment may be revoked, and another agent appointed, in the manner provided by law. Said office shall be the Developer's Registered Office.

8. **Compliance and Duration:** This Declaration is intended to comply with the requirements of the Act and all other laws of North Carolina and the United States of America. The provisions hereof shall run with the land and shall be binding on Developer, the Association, all Owners and all others claiming under them until December 31, 2027, at which time they shall be automatically extended for successive ten (10) year periods, unless by vote of no less than eighty percent (80%) of the then Owners (one (1) vote per Unit owned) it is agreed to amend or terminate the same. Prior to the Release Date, no termination hereof shall occur without the consent of Developer. Invalidation of any part hereof shall not serve affect or invalidate of the other parts hereof.

9. **Right of First Refusal:** If any of Units 1 through 4, inclusive, which are owned by someone other than Developer, are offered for sale, upon receipt of an offer to purchase which the Owner wishes to accept (the "Buy Offer"), the Owner shall offer such Unit to Developer on the same terms and conditions set forth in the Buy Offer in the form of an (signed by such Owner) offer to sell (the "Sale Offer"). Developer shall have twenty (20) days from its receipt of the Sale Offer to accept the same. Developer's failure to accept the Sale Offer within such period shall constitute a rejection of the Sale Offer. If the Sale Offer is rejected, the Owner shall have ninety (90) days thereafter to close the purchase of the Property on the Buy Offer terms. Failure to close within such period on such terms shall require an entirely new submission of a Sale Offer to Developer. Even if the Buy Offer sale to someone other than Developer closes, such closing shall not terminate Developer's right of first refusal with respect to such Unit, as it shall continue thereafter until December 31, 2036, or Developer's release of the same in writing, whichever first occurs. Regardless of what is in the Buy Offer, in no event may Developer be required to close sooner than the sixty first (61<sup>st</sup>) day following its acceptance of the Sale Offer nor to deposit more than Five Thousand Dollars (\$5,000) as earnest money, nor to offer anything in trade. The sale of the Flats Units is also subject to the provisions regarding the same in the Flats Declaration.

10. **Rules and Regulations:** The present Rules and Regulations are as set forth below:

#### **Rules and Regulations**

a. No pet or other animal, fish, bird, reptile or other wildlife of any kind or nature shall be kept, stored or otherwise be allowed to occupy any part of any Land Parcel or Subdivision Lot, except as follows:

(i) Tropical fish, goldfish, parakeets, canaries, or other such customary, domestic pets, that remain at all times inside a structure, so long as the same does not constitute a nuisance.

(ii) No more than two (2) cats or two (2) dogs or any combination of cats and dogs, so long as the sum total thereof does not exceed two (2), may be kept, so long as none of them constitutes a nuisance. No commercial breeding operation is or shall be permitted. The dogs are not to be allowed off a leash outside of the Owner's Land Parcel. All solid waste of any animal must be immediately removed or disposed of in a sanitary manner by the Owner of the Land Parcel where the animal is being kept, using a shovel, scoop or the like. No pet of any kind may be kept if the same is deemed a nuisance by the Board. No animal shall be allowed to roam outside the Land Parcel owned by the animal's Owner.

b. No garbage, trash or refuse of any kind or nature shall be stored, kept, deposited or allowed to remain outside the Home by any Owner or Development occupant, other than the placement of garbage in the containers designated therefor by the Board. No Land Parcel may be used as a dumping ground for rubbish, trash or garbage and all storage containers for rubbish, trash or garbage must be kept in a clean and sightly condition.

c. No loud noises, offensive odors or other nuisance shall exist on, about, or be permitted to emanate from any Land Parcel.

d. At such time as any facilities intended to be for common use are placed into operation by the Association or the Developer, the Association may, from time to time, establish specific rules and regulations governing the use thereof.

e. Except for short term visitors, customers and invitees, all of whose vehicles may be parked on the street while visiting, all vehicles of every kind shall be parked on the Owner's Land Parcel or area designated by the Association and not on any other part of a street. In addition, should any Owner have any motor home, recreational vehicle, boat or other similar or dissimilar large object, the same must be stored inside the garage of the Home, or in such other area as is designated by the Association. All garages must have the doors thereof kept in closed condition at all times, except during the time a vehicle is entering or exiting. All vehicle parking and operation within the Development is subject to the regulation and control of the Association.

f. The provisions of this Section 10 may be amended, without the necessity of recording the same in the office of the Register of Deeds, in the manner set forth elsewhere in the Declaration, from time to time.

g. No sign of any kind shall be displayed to the public or otherwise externally visible on any Land Parcel except one (1) sign of no more than five (5) square feet which may advertise, in a tasteful way, such property being for sale or rent, and signs used by a building contractor or lender during the construction and sales period of a Home. Notwithstanding the foregoing, Developer may, at any time and from time to time, place signs on all Land Parcels owned by it, so long as the same do not violate any laws or ordinances.

h. No clotheslines or drying yards shall be placed within the Development so as to be visible from any Common element or any adjacent Unit.

i. No firearms, weapons or fireworks of any variety shall be discharged or set off within the Development. Without limiting the foregoing, firearms include BB guns and pellet guns.

j. All vehicle parking is subject to the regulation and control of the Association. No RV's, campers, boats or boat trailers are permitted. No vehicle maintenance or repair work is permitted. All vehicles parked or otherwise kept within the Property's bounds by, for or through the occupants of a Unit must be reasonably maintained, in working condition, and with a current inspection sticker and license tag. All said vehicles are subject to being towed by the Association if in violation of any of the foregoing and not corrected within ten (10) days of written notice. No parking space shall be marked as reserved in any way, other than those designated for handicap use, or as otherwise provided herein.

10. **Bylaws:** The present Bylaws of the Association are as set forth below:

**Bylaws of  
Sunset Park Development Association, Inc.**

**Article I  
Plan of Unit Ownership**

Section 1: All terms defined in the Declaration of Sunset Park Development Planned Community, to which these Bylaws are attached, shall be deemed so defined herein and shall be used without further definition. The Association is incorporated.

Section 2: The Development is located in Buncombe County, North Carolina and has been restricted as a Planned Community, as set forth in the Declaration.

Section 3: The provisions of these Bylaws are applicable to the Units and the occupancy and use thereof.

Section 4: All Owners, tenants, future tenants, or their employees or any other person that might occupy and/or use a Unit in any manner, are subject to the provisions of these Bylaws and to any Rules and Regulations adopted, from time to time, pursuant to the Declaration.

Section 5: The acquisition or occupancy of any of the Property hereafter shall constitute acceptance of these Bylaws, the Declaration, the Rules and Regulations and amendments thereto and an agreement to comply therewith.

**Article II  
Voting, Majority of Owners, Quorum, Proxies**

Section 1: Except as otherwise set forth below, each Unit shall have one vote in all matters to be considered by the Owners. Where a Unit is owned by more than one person or entity, such persons or entities shall designate, by agreement in writing filed with the Board, the person entitled to cast the vote for the Unit. Notwithstanding the foregoing, prior to the Release Date, Developer shall have the Control Rights. If an issue is determined by the Board to only affect certain types of Units (e.g. Townhomes) the Owners voting thereon may, at the Association's direction be limited to only the Owners of such Unit type.

Section 2: Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners at any meeting shall constitute a quorum. Prior to the Release Date, Developer must be present at any meeting.

Section 3: Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of any meeting.

Section 4: Subsequent to the Release Date, in the event of deadlock between conflicting interests, the same shall first sought to be resolved by mediation. Prior to the Release Date, since Developer has a majority of the votes, no deadlock is possible.

Section 5: In lieu of formal meetings, all actions of the Association and the Board may be taken by unanimous consent of the Association, its Board or Owners, as applicable, with written evidence thereof to be filed with the Association.

### **Article III Administration**

Section 1: The Association, generally acting through the Board, will have the responsibility of administering the Development, approving its annual budget, establishing and collecting monthly assessments, and arranging for the management of the Development, which may be pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of a management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a Majority of Owners. The Association shall have all powers necessary to administer the Development and provided for a non-profit corporation pursuant to the laws of North Carolina.

Section 2: Meetings of the Association shall be held at the principal office of the Development or such other suitable place convenient to the Owners as may be designated by the Board.

Section 3: The first annual meeting of the Association shall be held on the 1st day of December 2008. Thereafter, the annual meetings of the Association shall be held on the first day of December of each succeeding year, unless this shall be a Sunday or legal holiday, in which case the meeting shall be held on the next business day. At such meetings, the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Owners may also transact such other business of the Association as may properly come before them.

Section 4: The President shall call a special meeting of the Owners if so directed by a resolution of the Board, or if requested on a petition signed by Owners entitled to cast one-third of the outstanding votes and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice thereof, unless consented to by Owners having the right to cast three fourths of the then outstanding votes.

Section 5: The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place where it is to be held to each Owner at least ten (10) but not more than sixty (60) days prior to such meeting. Notice shall be personally delivered or mailed, postage prepaid, to the Owner's address within the Development or at such other address, as an Owner shall have specified to the Association in writing. A notice mailed shall be deemed delivered the third day following mailing.

Section 6: If any meeting of Owners does not have a quorum present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight hours from the time the original meeting was called, notice of which shall be provided to all Owners not then present.

Section 7: The order of business at all meetings of the Owners shall be as follows, unless otherwise agreed:

- a. Roll Call
- b. Proof of Notice of Meeting or Waiver of Notice
- c. Reading of minutes of preceding meeting
- d. Reports of Officers
- e. Reports of Committees
- f. Election of Directors (when so required)
- g. Unfinished business

h. New business.

Section 8: The Association shall make available, within a reasonable time, upon reasonable request therefor, copies of the Declaration, these Bylaws, the Rules and Regulations and the books, records and financial statements of the Association to Unit Owners and Holders. In addition, if called upon to do so, the Association shall, within a reasonable time of request therefor, verify Assessments due and reasonably aid in the transfer of ownership. The Association may charge, and every requesting party shall pay, a reasonable amount to compensate it for the copying costs, assessment verification and aid in transfer.

Section 9: The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common elements, or part thereof and each Owner appoints the Association as the Owner's attorney-in-fact for such purposes. In the event of a taking or acquisition of part of all the Common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, for the use and benefit of the Owners as required by the Declaration.

**Article IV**  
**Board of Directors**

Section 1: The affairs of the Association shall be governed by the Board. The Board shall be composed of three (3) persons (or votes as set forth herein). Prior to the Release Date, Developer shall appoint two of the Directors. The remaining Director, prior to the Release Date, shall be selected by the majority vote of the Unit Owners, other than Developer, but if none, Developer shall appoint the third Director. Each member of the Board shall be either the owner of a Unit, have an interest therein, or be proposed by one of the foregoing. Subsequent to the Release Date, Developer shall have no extraordinary voting rights or appointment rights, and at that time the Directors shall be elected by the majority vote of the Owners of Units, including Developer.

Section 2: The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law prohibited or by these Bylaws directed to be done by the Owners.

Section 3: In addition to the duties elsewhere imposed by these Bylaws or by resolutions of the Association, the Board shall be responsible for overseeing the following:

(a) Care, upkeep and protection of the Development in the manner provided herein, including but not limited to the repair, maintenance, replacement, paving, striping, landscaping, mowing, street snow removal, liability insuring, lighting and otherwise keeping in reasonably good and sightly condition, all Common elements, as is required herein. It is the intention of Developer and all Owners that the obligations of Owners to pay the Assessments should never fail for lack of a standard to measure or for a lack of clarity as to what is to be maintained. By acceptance hereof and of a deed to a Unit or a Subdivision Lot, all Owners waive any and all right to claim the non-enforceability of Assessments for lack of a standard or clarity. Owners shall have the right to receive information as to such matters, but not to claim any lack of enforceability;

(b) Hiring and firing of personnel for the maintenance and operation of the Development and the Common elements;

(c) Fiscal management of the Association, including but not limited to the determination of

and collection of all Assessments in accordance with the Declaration and these Bylaws;

(d) Borrowing money for the purpose of improving the Common elements; and in aid thereof, to mortgage and grant liens secured by the Common elements, but subject to the Declaration, the Easement and the Developer's Reservation, with no such mortgage to be granted without the affirmative vote of at least two (2) Directors.

Section 4: The Board may contract with or employ any person, firm or corporation, including the Developer or an affiliate of the Developer to serve as management agent for the Development and the Association, at a reasonable compensation established by the Board.

Section 5: The Developer shall have the right to designate all members of the Board prior to the first annual meeting of members. Notwithstanding anything to the contrary elsewhere herein, at the first annual meeting following the Release Date, the term of office of one (1) Director shall be fixed to expire upon the date of the second annual meeting of the Association thereafter, the term of one Director shall be fixed to expire upon the date of the third annual meeting and the term of one Director shall be fixed to expire upon the date of the fourth annual meeting of the Association thereafter. No Director shall be elected for longer term than three (3) years (but Directors may serve consecutive terms). At the expiration of the initial term of office of each respective Director, the successor shall be elected to serve a term of three (3) years. The Directors shall hold office until their successors have been elected and hold their first meeting. Prior to the Release Date, Developer need not appoint more than one (1) Director who shall (if so designated by Developer) have two (2) votes on the Board; and the third (elected) Director shall be the initial Director having a term of three (3) years.

Section 6: Vacancies on the Board caused by any reason other than the removal of a Director by a vote a Majority of Owners shall be filled by vote of the majority of the then remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be Director until a successor is elected at the next annual meeting of the Association.

Section 7: At any regular or special meeting of the Association duly called, any one or more of the Directors previously elected by the Owners may be removed, with or without cause, by a Majority of Owners; and their successors may then and there be elected by the affirmative majority vote of Owners to fill the vacancy thus created. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 8: The first meeting of a newly elected Board shall be held within five (5) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the Board shall be present.

Section 9: Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of Directors. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, email, telephone or telegraph, at least ten (10) days prior to the date named for such meeting.

Section 10: Special meetings of the Board may be called by the President on three (3) days' notice to each Director given personally or by mail, email, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of the

Directors.

Section 11: Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12: At all meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business and acts of the majority of the Directors present at a meeting at which a quorum is present shall be acts of the Board, except as provided hereafter. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, and business which might have been transacted at the meeting as originally called may be transacted without further notice, but notice of the adjourned meeting shall be provided to the directors not present.

Section 13: The Board shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds; provided, however, that this provision shall not require that the Treasurer be bonded if, under the terms of any management agreement in effect from time to time, the person, firm or corporation serving as management agent is responsible for collecting and disbursing Assessment funds and is required to account to the Association for said funds at least annually. The premiums on necessary fidelity bonds shall be paid by the Association.

Section 14: No member of the Board shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

## **Article V Officers**

Section 1: The principal officers of the Association shall be a President, a Vice President, a Secretary and Treasurer, all of whom shall be elected by the Board. The directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 2: The officers of the Association shall be elected annually by the Board at the organization meeting of each new board, and they shall hold office at the pleasure of the Board.

Section 3: Upon affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4: The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and of the Board and shall have all of the general powers and duties which are usually vested in the office of President of an association, including but not limited to the powers to appoint committees from among the Unit Owners and Subdivision Lot Owners from time to time.

Section 5: The Vice President shall take the place of the President and perform such duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other members of the Board to do so on an interim basis. The Vice

President shall also perform such other duties as shall from time to time be delegated by the Board.

Section 6: The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; shall have charge of such books and papers as the Board may direct; and shall, in general, perform all the duties incident to the Office of Secretary.

Section 7: The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association, in such depositories as may from time to time be designated by the Board; provided, however, that the Treasurer shall not be responsible for such of the foregoing matters as have been delegated to the management agent pursuant to the provisions hereof.

Section 8: All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the of the Association shall be executed by any two officers (for the purposes hereof, an attesting officer shall be deemed an executing officer) of the Association or by such other person(s), firm(s) or corporation(s), including the management agent, as may be designated by the Board. In no event shall any such document only be signed by one signatory.

Section 9: No officer shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

## **Article VI**

### **Fiscal Management of the Association**

Section 1: The Board shall use the following guidelines in the fiscal management of the Association:

(a) Receipts and disbursements of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate:

(i) Current maintenance and administrative expenses, including a reasonable allowance for current contingencies and working funds other than expenditures chargeable to reserves, and amounts necessary to make up any deficiencies in expenses for any prior year. Any balance in this fund at the end of each year shall be applied to reduce the Assessments for current expenses for the succeeding year or shall be transferred to the appropriate reserve fund or general operating reserve, hereinafter provided for, as determined by the Board.

(ii) A general reserve fund for the purpose of performing periodic maintenance, replacement and repair of the Common expense elements and for such other purposes as may, from time to time, appear to be necessary or appropriate.

(iii) A general operating reserve for the purpose of providing a measure of financial stability during periods of special financial stress, which may be used to meet deficiencies from time to time as a result of delinquent payment of Assessments by Owners and other contingencies, may be established, from time to time, if so desired by the Board.

(iv) The amounts to pay the premiums of insurance policies obtained and maintained pursuant to other portions hereof.

(v) Repayment of any loans to the Association, the proceeds of which were used to improve Common elements.

(b) The Board shall adopt a budget for each calendar year that shall include the estimated funds required to provide and maintain funds for the foregoing accounts. Said budget shall be based upon the costs set forth in any management agreement in effect pursuant hereto to the extent that said agreement is applicable to the accounts established above. If no such agreement is in effect, the budget shall be determined by the Board, except that the amount for any budgeted item may not be increased by more than fifteen percent (15%) over the preceding year's amount unless approved by a Majority of Owners, or unless required to preserve the safety of the Development or any part thereof. Any special assessment required to repair or replace Townhome expense elements shall only be levied against Townhome Units and shall be a part of the Townhome costs.

Section 2: Copies of the budget and proposed Assessments shall be transmitted to each Owner on or before November 1 preceding the calendar year for which the budget applies. If the budget is amended subsequently, a copy of the amended budget shall be furnished to each member.

Section 3: Assessments against the Owners for their shares of the items of the budget shall be made for the calendar year annually, at the annual meeting of the Association preceding the year for which the Assessments are being made. Such Assessments shall be due in twelve (or less if so voted by the Board) equal installments payable monthly (or quarterly or semi-annually if so voted by the Board) on the first day of each calendar month (quarter or semi-annual period, if so voted) during said year. In the event the annual Assessment proves to be insufficient, the budget and the amount of the Assessments may be amended at any time during the year by the Board; subject, however, to the limitations imposed above. The unpaid Assessment, as amended, for the remaining portion of the calendar year, shall be divided by the number of months remaining in the year and such necessary increased amount shall be payable monthly for the balance of the installments for the budgeted year.

Section 4: If an Owner shall fail to timely pay any installment of an Assessment, the Association may accelerate the remaining installments of the current year's Assessments, upon notice to such Owner, and then the unpaid balance of the current year's Assessment shall come due upon the date stated in the notice, but not less than ten (10) days after the forwarding of the notice to the Owner.

Section 5: Assessments for expenses that are not included in the budget shall be made only after notice of the need for such is given to the Owners. After such notice, and upon approval by the Board at its next meeting, the Assessment shall become effective, and it shall be due after thirty (30) days' notice, in such manner as the Board may require in the notice of Assessment.

Section 6: All unpaid Assessments shall bear a late charge computed at a rate of twelve percent (12%) per annum after thirty (30) days from the time the same are due. In addition, fines may be levied from the Assessment's original due date. In addition, delinquent Owners shall be liable for fines levied by the Association per the Act, the costs to the Association, including reasonable attorneys' fees, of collection of such unpaid Assessments. Unpaid Assessments may be collected by the Association in any manner permitted by law, and during the pendency of an action brought to foreclose a lien for an unpaid Assessment on a Unit or Subdivision Lot, the property's Owner shall be required to pay reasonable rental to the Association for such Owner's usage of the property, and the Association may obtain the appointment of a receiver to collect the same.

Section 7: The Board shall be required to obtain and maintain, to the extent obtainable, the

insurance required by the Declaration or otherwise selected by the Board in its discretion. All such policies shall provide that adjustment of loss shall be made with the Board or its designated representatives. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds.

Section 8: Owners must at all times, and at their own expense, carry the insurance required by the Declaration. All Owners individual policies must contain waivers of subrogation; and the liability of the carriers issuing insurance obtained by the Board must not be affected or diminished by reason of any such additional insurance carried by any Owner. All Owners must, as required by the Declaration, provide the Association evidence of the insurance being in effect at all times.

**Article VII**  
**Leasing and Time Sharing**

Section 1: No tenant or other non-Owner occupant shall be allowed to enter into possession of any Unit except pursuant to a written lease. Except for leases from Developer, no lease shall be for a period of less than one (1) year. Copies of leases for the Units shall be furnished to the Association at or prior to the time of the tenant's occupancy.

Section 2: No time sharing type occupancy, whether created by deed or otherwise, may be utilized in connection with any part of the Development.

**Article VIII**  
**Liability of Officer and Directors of the Association**

The officers of the Association and members of the Board designated or elected as provided in these Bylaws, shall not be liable to Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the officers and members of the Board against all contractual liability to others arising out of contracts made by the officer and/or Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the officers and members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Development. It is also intended that the liability of any Owner arising out of any contract made by the officers and/or Board or out of the aforesaid indemnity in favor of the officers and/or members of the Board shall be limited to such proportion of the total liability thereunder as such Owner's property's value bears to all other such values. Every agreement made by the officers or members of the Board or the management agent or by the manager on behalf of the Development shall provide that the officers, members of the Board, management agent or manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as they may have as an Owner).

**Article IX**  
**Amendment**

These Bylaws may be amended by the affirmative vote of a Majority of Owners and a majority of Holders. Notwithstanding the foregoing, no amendment hereof shall occur prior to the Release Date without the approval of Developer. No amendment hereof shall occur without notice of the proposed amendment being provided in the notice of the meeting.

**[Deliberately left blank.]**

In witness whereof, the parties hereto have caused this instrument to be executed the day and year above written.

**IRIS PROPERTIES INVESTMENTS, LLC**

By: \_\_\_\_\_  
Managing Member

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State of North Carolina - County of Buncombe

I a Notary Public of said County and State, certify that Alan Laibson, personally appeared before me on this \_\_\_\_ day of \_\_\_\_\_, 2007, and personally acknowledged her due execution of the foregoing instrument as the Managing Member of Iris Properties Investments, LLC, a North Carolina limited liability company, on behalf of said limited liability company, by authority duly vested.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

## JOINDER

Capital Bank (the "Bank"), the holder of that deed of trust recorded in Book 4472, Page 1610, Buncombe County Registry (the "Deed of Trust"), and CB TRUSTEE, LLC, in its capacity as trustee under the Deed of Trust, join in this Declaration of Sunset Park Planned Community (the "Declaration"), for the sole purpose of subordinating the lien of the Deed of Trust to the provisions of the Declaration. Notwithstanding the preceding to the contrary: (i) the lien of the Deed of Trust (as that instrument may be subsequently, modified or renewed) shall nevertheless remain superior to any and all liens now or subsequently created under the Declaration; (ii) the Bank shall, without further notice, be deemed to be a "Holder" as described in the Declaration without any further notice; and (iii) the trustee's deed given in connection with the foreclosure of the Deed of Trust or a deed in lieu of foreclosure under the Deed of Trust accepted by the Bank shall extinguish all liens for those Assessments accruing prior to the date of that deed.

IN WITNESS WHEREOF, the undersigned have signed this Subordination this \_\_\_\_\_,  
2007.

### CAPITAL BANK

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

### CB TRUSTEE, LLC

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_