

BYLAWS  
OF  
RETREAT AT FRANKLIN OWNERS ASSOCIATION, INC.  
a North Carolina Nonprofit Corporation

ARTICLE I: IDENTITY

These are the Bylaws of THE RETREAT AT FRANKLIN HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, (hereinafter the "Association"), the Articles of Incorporation (hereinafter the "Articles") of which have been filed in the office of the North Carolina Secretary of State.

For purposes of these Bylaws, terms specifically defined in the Amended Declaration of Restrictions and Covenants filed in the Offices of the Register of Deeds of Orange County or in the Charter of the Corporation shall have the same meaning herein.

ARTICLE II: QUALIFICATIONS AND RESPONSIBILITIES OF MEMBERS

2.1 Members. Each Unit Owner shall be a member of the Association, and shall remain a member until (s)he ceases to be a Unit Owner.

2.2 More Than One Owner. When there is more than one Owner of a Unit, all such persons shall be members of the Association.

2.3 Registration. It shall be the duty of each Unit Owner to register his name, in writing and the number of his Unit, together with the name and address of his first mortgagee (if any), with the Secretary of the Association. If a Unit owner does not so register, the Association shall be under no obligation to recognize his membership.

2.4 Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

### ARTICLE III: MEMBERS' MEETING AND VOTING

3.1 Place. Meetings of the members shall be held at the registered office of the Association, or such other place within Orange County, North Carolina as may be designated from time to time by the Board.

3.2 Annual Meetings. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

3.3 Special Meetings. Special meetings of the members may be called at any time by the President or by the Board, and shall be called and held within thirty (30) days after written request therefor signed by members of the Association entitled to cast at least sixty percent (60%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4 Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent by the United States Mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary, at least thirty (30) days (but not more than sixty (60) days) in advance of any annual or regularly scheduled meeting and at least seven (7) days in advance of any other meeting. Notice may be waived by actual attendance at a meeting as indicated by a signed waiver or by roll call of

the members present recorded in the minutes of the meeting, but a meeting may not proceed by such waiver unless 80% of the Unit Owners are present.

3.5 Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Fifty One Percent (51%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

3.6 Votes; Association Shall Not Vote. The total votes in the Association are 40. The vote allocated to a Unit may be cast only by the Unit Owner of that Unit. When there is more than one Owner of a Unit, the vote for that Unit shall be cast by one of the owners. The votes allocated to a Unit shall not be split but shall be voted as a single whole. The Association shall not be entitled to cast a vote pursuant to its ownership of the open space.

3.7 Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all Owners of the Unit the votes of which are subject to the proxy, be given only to another Member or to a Security Holder in that Unit, and be filed with the Secretary before the meeting. A proxy shall be valid until revoked in writing by all owners of such Unit.

3.8 Required Votes. All questions shall be decided by a majority of the votes cast on the questions, unless the provisions of applicable law, the Declaration of Restrictions and Covenants for these Bylaws require a greater vote.

3.9 Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

3.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

#### ARTICLE IV: DIRECTORS

4.1 First Board. The Board shall consist of those persons elected by the Members and such successors as may be elected or appointed pursuant to these Bylaws.

4.2 Number and Qualifications of Directors. The Board shall consist of three (3) natural persons, as determined at any annual meeting by the members. Each Director shall each be a Unit Owner.

4.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

4.4 Term. The terms of the Directors shall be for one (1) year.

4.5 Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty percent (60%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term.

4.6 Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings

shall be given to each Director, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the meeting.

4.8 Special Meetings. Special meetings of the Board may be called by the president and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other Director or to the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

Required Notice may be waived by actual attendance at a meeting, but no such meeting by waiver may take place unless all of the Officers and Directors of the Association attend.

4.9 Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Amended Declaration of Restrictions and Covenants or these Bylaws.

4.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in writing, setting forth the action taken, and signed by all Directors.

4.12 Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Declaration of Restrictions and Covenants, the Articles, and these Bylaws, as any thereof may from time to time be amended, provided however that no amendment shall alter any obligation to pay assessments levied against lots for the maintenance of roads and appropriate open space maintenance, until these responsibilities are expressly assumed by some other entity. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Amended Declaration of Restrictions and Covenants, the Articles and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a report containing at least the following:

- (i) A statement of any capital expenditures anticipated by the Association during the current year or succeeding two (2) fiscal years.
- (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
- (iii) A statement of the financial condition of the Association for the last fiscal year.
- (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
- (v) A statement of the insurance coverage provided by the Association.
- (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit number, the Unit Owner and the amount of the unpaid assessment

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain, repair replace, modify and improve any Open Space and Road until accepted for maintenance by the North Carolina Department of Transportation.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Amended Declaration of Restrictions and Covenants, the Articles, these Bylaws, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration of Restrictions and Covenants, the Articles or these Bylaws, to be done by the Board or the members.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Common Elements or more than one Unit.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of the Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(k) To buy Units in foreclosure of an assessment lien, or at any other time for any other reason, and to sell, lease, mortgage, and otherwise deal in Units from time to time owned by the Association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements which provide amenities to the Units.

(m) To grant leases, licenses, concessions and easements through and over the Common Elements.

(n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration of Restrictions and Covenants or certificates of unpaid assessments.

(o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Amended Declaration of Restrictions and Covenants, these Bylaws, or the rules and regulations..

#### ARTICLE V: OFFICERS

5.1 Designation of Officers. The officers of this Association shall be President, a Vice President, a Secretary, and a Treasurer. A person may not hold one or more offices at one time, except that one person may serve as both Secretary and Treasurer. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration of Restrictions and Covenants.

5.3 Term. Each officer shall serve until his successor has been duly elected and

has qualified.

5.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5 Vacancy. Any vacancy in any office shall be filled by the Board and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6 Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties as shall be assigned by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon

request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds to the association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7 Execution of Agreement, etc. All agreements, deeds, mortgages, or other instruments shall be executed by any two (2) officers.

5.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

#### ARTICLE VI: INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes as now enacted or hereafter amended.

#### ARTICLE VII: FISCAL MANAGEMENT.

7.1 Depository. The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or any other persons authorized by the Board.

7.2 Payment Vouchers. Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.

7.3 Fiscal Year. The fiscal year of the Association shall be determined from time to time by the Board of Directors.

## ARTICLE VIII: ASSESSMENTS

8.1 Obligation of Members to Pay Assessments; Amounts of Levy. Each Unit Owner shall be personally and severally liable for the Common Expenses that are levied against his Unit while a Unit Owner. Each Unit shall be assessed on a pro rata basis for that Unit's percentage of Common Expenses as incurred.

8.2 Preparation of Budget and Levying of Assessment. The procedure set forth in Article VII of the Amended Declaration of Restrictions and Covenants shall control the procedure and limitations for the preparation of a budget and levying of assessments. Anything contained in these Bylaws that shall conflict with the provisions set forth in said Declaration of Restrictions and Covenants shall be deemed limited or expanded to conform with the procedures and requirements contained in said Declaration of Restrictions and Covenants.

8.3 Assessment a Lien. Every assessment shall constitute a lien upon each Unit assessed from the date of the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration of Restrictions and Covenants.

8.4 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association at such times

and in such manner as the Board may from time to time direct.

8.5 Lien as Against First Mortgagees. The lien of assessments shall be subordinate to the lien of a First Mortgage.

8.6 Funds and Reserves. All sums collected by the Association from assessments shall be accounted for as directed by the Board. The following Funds may be maintained, if, in the discretion of the Board, such Funds and methods of accounting are desirable for the Association:

(a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting maintenance, repairs and replacements of the Common Elements and Improvements located within the Condominium. The amount designated as needed to be maintained within this reserve fund shall be determined and designated, from time to time, by the Board of Directors of the Association.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during periods of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) Maintenance Fund. To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.

(d) Working Capital Fund. All funds, if any, received by the Association for the initial working capital fund of the Association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or desirable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the Association.

8.7 Special Assessments. In addition to the assessments levied pursuant to Section 8.3, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgment are required for:

(a) Maintenance, repair, restoration and reconstruction of the Common Elements, as necessary and appropriate.

(b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Five Hundred Dollars (\$500.00) shall be first approved by the members entitled to cast at least fifty-one percent (75%) of the total votes in the Association at a regular or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1 and 9.3 hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.8 Common Expenses Benefiting Less Than All Units. The Association may assess any item of Common Expenses benefiting less than all of the Units against the Units benefitted in proportion to their Common Expense liability.

8.9 Failure to Prepare Budget and Levy Annual Assessment: Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the

Board. Until a new assessment is levied by the Board pursuant to Section 8.3 each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.10 Assessment Roll; Certificate. All assessment shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives.

Such roll shall include, for each Unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Unit. The certificate shall be furnished within ten (10) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate, a reasonable fee may be charged by the Board.

8.11 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full with interest, without further notice, and may be foreclosed by the Association in the manner provided by law. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

If any action is taken by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rent for the use of the Unit during the period of redemption from such foreclosure, and the Association shall be

entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such reasonable attorneys' fee, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid, as set forth in the Amended Declaration of Restrictions and Covenants for The Retreat at Franklin.

8.12 Interest on Delinquent Assessments. Assessment, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by law, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by law. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

8.13 Common Expenses. Common expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Amended Declaration of Restrictions and Covenants, and shall include without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or co-insurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or

incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

#### **ARTICLE IX: COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES.**

9.1 **Default and Remedies.** A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration of Restrictions and Covenants, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, aggrieved Unit Owner, or by an person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Declaration of Restrictions and Covenants, these Bylaws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to vote as a member of the Association until the default is cured.

9.2 **Notice of Default and Failure to Cure.** In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Unit when required under the Declaration of Restrictions and Covenants, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the

defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to determination. If the defaulting member (i) does not cure the default or request a hearing with the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board after hearing, then the board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

9.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 9.2 hereof, whichever is applicable, where the default is a structure, thing or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the

defaulting member's expense (and levy an assessment therefor as provided in Section 9.1 hereof), the structure, thing or condition constituting the default, and the Board, the Association, and their agents, employees and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

9.5 Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at (i) up to 18% as determined by the Association, or (ii) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

9.6 Non-Waiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration of Restrictions and Covenants, these Bylaws, the Articles or the rules and regulations as the same may from time to time be amended, shall constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

9.7 Assessment Liens. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article IX.

## ARTICLE X: AMENDMENT

An amendment to these Bylaws shall be made and approved in the same manner and will become effective when recorded in the same manner and place as an amendment to the Amended Declaration of Restrictions and Covenants.

#### ARTICLE XI: GENERAL PROVISIONS.

##### 11.1 Rules and Regulations.

(a) By the Board. The Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements and Units to the extent that the activity impacts use of the Common Elements, so as to promote the common use and enjoyment thereof by Unit Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Amended Declaration of Restrictions and Covenants and these Bylaws, with respect to lessees or tenants.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners, Occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest

of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office for the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

(e) Rules Hereby Established. (i) No Unit Owner shall erect any signs within his Unit or within the Open Space which are visible from outside the Unit, except for one sign indicating "For Sale", not to exceed 2 feet by 3 feet in dimensions; (ii) Any lease of all or any part of a Unit shall contain a covenant by the lessee to abide by the terms and conditions of the Declaration of Restrictions and Covenants and these Bylaws and a failure by the lessee to so abide shall be a default thereunder.

11.2 Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of the Association proceedings when not in conflict with the Amended Declaration of Restrictions and Covenants, these Bylaws, the Articles, or any statutes of the State of North Carolina applicable thereto.

11.3 Compliance with Law Conflict; Severability. These Bylaws are established in compliance with the law of the State of North Carolina. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said law, the provisions of said law shall control unless the law permits these Bylaws to override the law, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration of Restrictions and Covenants, the Declaration of Restrictions and Covenants shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the

remainder of these Bylaws, or the application thereof to any other person or circumstance.

ADOPTED BY THE RETREAT AT FRANKLIN OWNER'S ASSOCIATION,  
through its duly elected Board of Directors and Officers upon the affirmative vote of  
100% the Members of the Association.

This the 22<sup>nd</sup> day of May, 2007

BY: \_\_\_\_\_  
Hunter H. Bost, President and Chairman of the Board

\_\_\_\_\_  
David White, Vice President and Director

\_\_\_\_\_  
Kathryn White, Treasurer and Director

\_\_\_\_\_  
James E. Tanner III, Secretary

SHERWOOD PARTNERS, LLC

BY: \_\_\_\_\_  
Hunter H. Bost, Member Manager

# **THE RETREAT AT FRANKLIN OWNER'S ASSOCIATION, INC.**

## **RULES AND REGULATIONS #1**

WHEREAS, the Declaration of Condominium of The Retreat at Franklin (the "Declaration") and By-laws of The Retreat at Franklin Owner's Association, Inc. (the "By-laws"), give to the Board of Directors of The Retreat at Franklin Owner's Association, Inc. (the "Board of Directors") all the powers and duties necessary for the administration of the affairs of The Retreat at Franklin Condominium (the "Condominium");

WHEREAS, the Declaration and By-laws allow the Board of Directors the power from time to time to adopt any Rules and Regulations deemed necessary for the benefit and enjoyment of the Condominium;

WHEREAS, the Board of Directors assigns the Rules and Regulations Committee certain powers with regard to obtaining compliance with and enforcement of the Declaration of Condominium for The Retreat at Franklin, the By-laws of The Retreat at Franklin Owner's Association, Inc., and the Rules and Regulations;

WHEREAS, for the benefit and protection of the Association and of the individual Unit Owner and Residents, the Board of Directors deems it necessary and desirable to establish the following set of Rules and Regulations for The Retreat at Franklin Owner's Association, Inc.;

WHEREAS, the Board of Directors, within its duties and powers, has established and adopted these stated Rules and Regulations for The Retreat at Franklin Condominiums, their established existence and enforcement therein shall become effective on the 1st day of June, 2007, at the hour of 10:00pm.

NOW, THEREFORE, BE IT RESOLVED THAT these Rules and Regulations and the enforcement of same dealing with the accepted conduct of The Retreat at Franklin Owner's Association members; their families; his or their guests; employees; agents or lessees be enacted. The Unit owner or Owners and Residents shall be held accountable for conduct of himself; his family; his guests; employees; agents or lessees with regard to the Rules and Regulations for The Retreat at Franklin Owner's Association, Inc. The Unit Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments against such Condominium Unit during the time such party or parties are Owner of a Condominium Unit. As according to the Special Resolution #1 of The Retreat at Franklin Owner's Association, Inc., assessments can be levied by the Association when dealing with enforcement of provisions of the Declaration of Condominium; By-laws of The Retreat at Franklin Owner's Association, Inc.; and these Adopted Rules and Regulations of The Retreat at Franklin Owner's Associations. These rules and regulations may be amended from time to time by resolution of the Board of Directors. As used in these Regulations the term "Unit Owners" shall apply to the owner of any unit, to his family, tenants, servants, agents, guests of him or his family.

## **Adoption of Rules and Regulations**

Enclosed are the adopted Rules and Regulations which clarify and consolidate the rules found in The Retreat at Franklin's declaration of a condominium and its By-laws. The mechanics of enforcing the rules and regulations are defined in the enclosed Special Resolution #1.

It is the responsibility of each Unit Owner to inform any family member, guest, employee, agent or lessee of the adopted rules and regulations.

If you need assistance in filing or wish to file a written request then please contact:

The Retreat at Franklin Rules & Regulation Committee  
C/o Doug Brown  
Real Property Management of Chapel Hill, Inc.  
105 West Orange Street Hillsborough, NC 27278-2133  
919-644-1000

## I. NUISANCES RESTRICTIONS

1. Unit Owners shall exercise extreme care about making noises or the use of musical instruments, radios, television sets, and amplifiers that may disturb other residents.
2. Unit Owners shall abide by the Noise Ordinances established by Orange County and/or the Town of Chapel Hill.
3. Barking or noisy animals. If any animals anywhere within the Common Area or anywhere within the Unit Owner's Condominium shall make noise to such an extent that said noise or barking can be heard in another unit or heard anywhere in the Common Area, then in such event, the Unit Owner must remove said animal from the Condominium Unit and from the Common Area, and such animal must be housed elsewhere. All pets shall be registered with the Association.
4. No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed.
5. No Unit Owner shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or of the Common Property.
6. Due to local ordinances and Association insurance coverage, kerosene heaters and the storage of kerosene, gasoline, or other inflammable or explosive agents are strictly prohibited.
7. Due to local ordinances and Association insurance coverage, the use of gas or charcoal grills or similar outdoor cooking devices are strictly prohibited. Common area grills are provided for the exclusive use of the Unit Owners.
8. Satellite dishes are prohibited. Cable and wireless internet services are provided to Unit Owners as part of their Homeowner's dues.
9. All laws and local ordinances must be observed relative to maintaining flammable, explosive or otherwise dangerous material in the units or on Common Areas.

## II. PARKING RULES AND REGULATIONS

1. No boats, campers, unlicensed or disabled vehicles shall be allowed within any Common Area without the express written consent of the Board of Directors of the Condominium.
2. No Tractor-trailer trucks or other unusually large vehicles, equipment or machinery may be parked for more than one (1) hour in any Common Area, unless the same is being used in making repairs to a unit or Common Area or

engaged in moving furniture and possessions to or from a Unit.

3. No Unit Owner shall occupy more than two (2) parking spaces in the Common Area without the express written consent of the Board of Directors of the Condominium. The Board of Directors have the right to designate parking privileges by assignment of space with only the limitation that each Unit Owner shall have at least one assigned space.
4. All license tags of Resident vehicles which will be parked in the Common parking area must be registered with the Association. All registered license tags will be kept on file with the Rules and Regulations Committee, the Association Managing Agent, and the Board of Directors.
5. Vehicles shall not be parked in the fire lane or block the trash dumpsters or block the delivery of mail.
6. Vehicles shall not be parked in front of the parking islands or anywhere else that is not a designated parking space.
7. Motorcycles should be parked in a parking space such that the kick stand will not do damage to the motorcycle and the asphalt.
8. No vehicles shall be parked displaying "for sale" signs.
9. Any vehicle parked in violation of the parking regulations of the Association and city will be towed at the vehicle owner's expense and any damage to the vehicle incurred from towing will be the sole responsibility of the owner.

### III. PET RULES AND REGULATIONS

1. Unit Owners keeping domestic animals will abide by the sanitary and other ordinances of Orange County and the Town of Chapel Hill.
2. Barking or noisy animals. If any animals anywhere within the Common Area or anywhere within the Unit Owner's Condominium shall make noise to such an extent that said noise or barking can be heard in another unit or heard anywhere in the Common Area, then in such event, the Unit Owner must remove said animal from the Condominium Unit and from the Common Area, and such animal must be housed elsewhere.
3. Unit Owners are responsible for any property damage, injury or general disturbances their pet may cause or inflict.
4. All pets must be housed and kept inside the units and pets shall not be allowed outside the units unless said pet is on a leash and accompanied by the Unit Owner or the Unit Owner's Representative. No doghouses or other structures used by pets may be placed outside the Unit.
5. Commercial breeding of pets is strictly prohibited within the Condominium unit, the Limited Common Area or the Common Areas.
6. All pets must have and display, as appropriate, evidence of all registrations and inoculations as required by Orange County or the Town of Chapel Hill.
7. A female dog or cat, while in heat, shall be kept confined in the Condominium unit to avoid creating a nuisance by attracting other animals.
8. Pets are permitted into the Common Areas only when carried or leashed by the Unit Owner. Any leashed pet must remain within fifteen (15) feet from the Unit Owner. No pet may be left leashed to any stationary object within the Common Areas or Limited Common Areas.
9. Pet owners are responsible for the immediate removal and proper disposal of animal waste from any Common Areas or Limited Common Areas.
10. No Unit Owner shall treat a pet or animal cruelly.
11. No Unit Owner shall have or harbor more than two (2) animals as pets per Unit.

#### IV. COMMON AREA RULES OF CONDUCT

1. No Unit Owner shall post any advertisements or posters of any kind in or on the Common Property except as authorized by the Association through the Board of Directors, to include but not be limited to, real estate signs.
2. No Unit Owner shall throw or deposit garbage or trash outside the trash dumpsters provided for such purposes. Trash should conform to the capacity of trash dumpsters. No large items or discarded furnishings may remain outside the dumpsters or in the adjacent dumpster areas. It is recommended that arrangements be made with appropriate organizations for pick-up of these furnishings. Unit and Common Areas must be kept clean and neat.
3. No Unit Owner shall improve or alter the exterior of the Condominium or in any manner alter the appearance of any portion of the exterior surface of any building without the prior written permission of the Board of Directors or a duly appointed Architectural Control Committee. This includes clothes lines, additional mail boxes, signs, advertising, fences, flower beds, gardens, window boxes (flower pots on patios and balconies are permitted in the Limited Common Areas), or stored articles.
4. No Unit Owner shall paint or decorate the exterior of the Condominium or install electrical wiring, television or radio antennae, satellite dishes, or any other objects, machines or air conditioning units which may protrude through the walls or roof of the Condominium (no window air conditioning units).
5. Visitors may use Limited Common Area and Common Areas only when accompanied by a Condominium Resident or Unit Owner.
6. Operation of any form of business, commercial or otherwise, in a Unit or within Common Areas without the written consent of the Board of Directors for the Association is prohibited. This includes the operation of child care operations.
7. No waste receptacles, supplies, grills, toys or other articles shall be left unattended in the Limited Common Area or in the Common Area sidewalks.
8. Unit Owners and Residents must keep Limited Common Area clear of "stored items" such as appliances, soda bottles, vehicle tires, cartons, boxes, old furniture, bicycles, etc.
9. No Unit owner may modify the Common Area without written consent of the Board of Directors.
10. No Unit owner may store any items under the outside stairs.
11. No Unit Owner may use charcoal or gas grills within 15 feet of any of the buildings. The Association will provide grills in designated Common Areas.
12. Unit Owners or Resident may not hang or lean anything such as clothes, clothes lines, rugs, towels, laundry or bicycles against fences, bushes, trees or building structures found in the Common Areas.
13. In order to retain the architectural integrity of the buildings, Unit Owners or

Residents may not hang or lean anything such as clothes, blankets, or other inappropriate items in the large glass sliding glass doors of the Units.

13. Any damage to the Common Area, Limited Common Area or other Association Properties, being building or other common elements of the property, including but not limited to damaged trees, bushes, flower beds, ground cover, and other landscaping must be paid for by the Unit Owner or Resident responsible.
14. Common Area sidewalks and Limited Common Area stairways, patios, balconies must not be obstructed and must allow ingress and egress as specified by the applicable fire codes and ordinances.
15. The Association may impound and/or discard any articles such as bicycles, toys or furniture found in the Common Area or Limited Common Area that obstruct the maintenance, landscaping, or painting crews from doing their job or increase hazards to others.
16. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies or rights of subrogation.

NOTE: In the event any of these Rules and Regulations conflict with North Carolina Statutory or Common Law, the applicable law shall control. In the event any provision is held to be unenforceable or invalid, such holding shall not impair the enforceability of any other valid provision.

End of Rules and Regulations #1

# **THE RETREAT AT FRANKLIN OWNER'S ASSOCIATION, INC.**

## **SPECIAL RESOLUTION #1**

WHEREAS, the Declaration of Condominium of The Retreat at Franklin and By-laws of The Retreat at Franklin Owner's Association, Inc. give to the Board of Directors all the powers and duties necessary for the administration of the affairs of The Retreat at Franklin Condominiums, including those existing under Common law and Statutes, and the Board may do all such acts and things to enforce regulations and establish homeowners committees to assist the Board of Directors in carrying out its duties.

WHEREAS, the By-laws allow the Board of Directors the power from time to time to adopt any Rules and Regulations deemed necessary or desirable for the benefit and enjoyment of the Condominium;

WHEREAS, the Board of Directors assigns the Rules and Regulations Committee certain powers with regard to obtaining compliance with and enforcement of the Declaration of Condominium for The Retreat at Franklin; the By-laws of The Retreat at Franklin Owner's Association and its Rules and Regulations;

WHEREAS, for the benefit and protection of the Association and of the individual Unit Owner, the Board of Directors deems it necessary and desirable to establish and operate by a procedure to assure due process in cases where there is a dispute between Unit Owner(s) [as that term is defined in the Preamble to the Rules and Regulations] or the Board of Directors and the Unit Owners with regard provisions of the Declaration of Condominium; By-laws of The Retreat at Franklin Owner's Association, Inc. or Rules and Regulations, thereby attempting to minimize the necessity of seeking action in or through a court of law; and

NOW, THEREFORE, BE IT RESOLVED THAT A "Special Resolution" appointing an adjudicatory panel dealing with enforcement of provisions of the Declaration of Condominium; By-laws of The Retreat at Franklin Owner's Association, Inc. and Rules and Regulations shall be adopted in accordance with the following procedures:

## **I. GENERAL**

In cases when the claim is five hundred dollars (\$500.00) or less, hearings before an adjudication panel may be held to determine if a Unit Owner is responsible for damages to any common element or whether the Association is responsible for damages to any unit. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each Unit Owner charged or against the Association. Liabilities of Unit Owners so assessed shall be assessments secured by lien under G.S. 47C-3-116. Liabilities of the Association may be offset by the Unit Owner against sums owing the Association and if so offset shall reduce the amount of any lien of the Association against the Unit at issue.

A hearing may also be held before an adjudicatory panel to determine if a Unit owner should be fined not to exceed one hundred and fifty dollars (\$150.00) for a violation of the declaration, By-laws or rules and regulations of the Association. Such panel shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. Such a fine shall be an assessment secured by lien under G.S. 47C-3-116.

This resolution is intended to serve as a protection to Unit Owners to assure that their due process rights are protected in an adversary proceeding before the adjudicatory panel, and to serve as a guideline for the Rules and Regulations Committee as they carry out their duties to enforce the Declaration of Condominium, By-laws, and the Rules and Regulations.

The Rules and Regulations Committee, as appropriate, may determine the specific manner in which the provisions of this resolution are to be implemented, provided that due process is protected. The Rules and Regulations Committee will:

1. Establish for the Board of Directors approval General Rules and Regulations for The Retreat at Franklin Owner's Association.
2. Recommend to the Board of Directors any revisions, amendments to, or additions of rules and regulations to be added- to or withdrawn from the adopted Rules and Regulations.
3. Accept complaints; attempt a resolution to the complaint; issue warnings regarding the complaint and levy fines if necessary. To sit in review hearing and appeal process. To make rulings during these review hearings.

The Rules and Regulations Committee shall consist of a maximum of five members or a minimum of three (3) members which are selected from the following categories by the chairman of the committee.

Two (2) elected Board of Director Officers

One (1) alternate Board of Director Member

One (1) Association Member at large

One (1) either a representative from the Management Firm of the Association or another Association Member at large.

Adjudicatory Panel members cannot be association directors, related to either respondent or complainant, next door neighbors of respondent, witnesses to the alleged violation, or involved

in making an investigation. They may select a chairman and recorder.

The tenure of the Rules and Regulation Committee members will be as followed:

1. Board of Director Officers will run concurrent with the term of office held
2. Alternate Board of Directors member will run from Annual Meeting to Annual Meeting
3. Association Member at Large will run from Annual Meeting to Annual Meeting
4. Management Firm Representative will run concurrent with Management Contract dates

Any inadvertent omission or failure to conduct an adversary proceeding in exact conformity with this resolution shall not invalidate the results of such proceeding, so long as prudent and reasonable attempt has been made to assure due process in substantial compliance with these rules.

“Due Process”, as used in this resolution, refers to the following basic rights:

1. The written statement of charges shall be provided to the respondent.
2. Notice that a hearing may be requested in which witnesses may appear and be cross-examined and evidence may be introduced.
3. An opportunity to appeal to the committee and to the Board of Directors shall be available.
4. Basic principles of fairness shall be applied.

Any Association Member shall exhaust all available remedies of the Association prescribed by this resolution before that Owner resorts to a court of law for relief with respect to any alleged violation by another Association Member of any provision of the Declaration of Condominium; By-laws, or Rules and Regulations. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board of Directors or the Rules and Regulations Committee.

## **II. PROCEDURES**

1. **INITIAL ACTIONS TO SECURE COMPLIANCE:** Any Owner, Officer, or Agent of the Association has the authority to request that an Owner cease or correct any act or omission which appears to be in violation of the Rules and Regulations Declaration and By-laws. Such informal, written, requests should be made before the formal process is initiated. This informal request should be properly documented.

In the case of disputes between Owners regarding activities within the unit or common areas, the Association will generally not become involved in the disputes or act on a complaint unless two (2) or more persons from different Unit locations have complained in writing.

2. **WRITTEN REQUEST:** A written request shall be directed to the Association, Managing Agent, or any other designated agent of the Association. The written request shall then be sent to the Rules and Regulations Committee.
  - a. A written request must state the nature of the alleged violation and is served on the alleged violator and the violator's unit owner. The written request must specify: (1) the alleged violation; (2) the action required to abate or compensate for the violation; and (3) a time period during which the violation may be abated without further sanction.
  - b. In addition the request shall also contain reference to the applicable part of the Declaration of Condominium; the By-laws, or the Rules and Regulations or pertaining local ordinance or law that has been violated.
  - c. The notice shall be mailed to the Unit Owner at the address on file at the Association Managing Agent's office that has been designated by the Unit Owner as his current mailing address, mailing to be by return receipt or certified mail.
  - d. A copy of written request will be filed with the Rules and Regulations Committee and the Association Managing Agent. A copy will also be sent to the President of the Association.
  - e. A period of fourteen (14) days from the date of the request shall be stated as the time period for abatement without further action from the Association. (This period may be extended, if requested by the Unit Owner, but only if in the opinion of the Rules and Regulations Committee additional time is needed for abatement of the violation. Such extension shall be put in writing and mailed to the Unit Owner by the Rules and Regulations Committee.)
3. **NOTICE TO PURSUE COMPLIANCE:** Within thirty (30) days of the written request, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Rules and Regulations Committee shall serve the alleged violator or violator's Unit Owner with written notice of hearing and potential penalty (see 4 f) may be assessed at said hearing to be held by the Rules and Regulations Committee in session. If the alleged violator does not respond within ten (10) days of service, his right to a hearing is deemed waived. A hearing must be held within thirty (30) days of the violation.

- a. **Initiation of Notice and Hearing:** A written complaint may be filed by any Owner, Officer, Director, or Agent of the Association with the Rules and Regulations Committee. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. The complaint should specify the specific provisions of the Declaration of Condominium; the By-laws, or the Rules and Regulations which the respondent is alleged to have violated; it should contain supporting facts. The complaint must be as specific as possible as to times, dates, places, and persons involved.
- b. **Preliminary Investigation:** Upon receipt and consideration of the written complaint the Rules and Regulations Committee may request the Association Managing Agent or a member of the Rules and Regulations Committee to make a preliminary investigation as to the validity of the complaint and promptly report the findings to the Rules and Regulations Committee. If conditions have been corrected since the complaint was made, or if the complaint is for any other reason no longer valid, the Rules and Regulations Committee shall determine the appropriate disposition of the matter and respond in writing to the complainant. If preliminary investigation reveals the need of further action, then the Rules and Regulations Committee may proceed with appropriate steps set forth below.
- c. **Procedure for Notice:** If the preliminary investigation indicates further action is necessary, the Rules and Regulations Committee shall serve a copy of the complaint on the respondent. Notice shall be hand delivered or mailed by the form of registered or certified mail through the United States Mail Service, return receipt requested to such Owner as the address or addresses required for notice of meetings. Service by mailing shall be deemed effective upon mailing in a regular depository of the United States Post Office. The complaint shall be accompanied with a postcard or other written form as described below entitled "NOTICE OF DEFENSE" which constitutes a notice of defense hereunder. No other action adversely affecting the rights of the respondent may be made in any case, unless the respondent shall have been served as provided herein. Along with service of the complaint, the Rules and Regulations Committee shall serve a "NOTICE OF HEARING" as provided herein, on all parties and witnesses. The hearing shall not be scheduled to take place less than fourteen (14) days from the sending of the notice. The Notice of Hearing sent to the respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19, at the hour of \_\_\_\_\_ (a.m.)/(p.m.), upon the charges made in the complaint served upon you and for which you could be liable in fine not in excess of (One Hundred Fifty Dollar) \$150.00 or damages not in excess of (Five Hundred Dollars) \$500.00 or both. You may be present at the hearing, but need not be represented by counsel, may present any relevant evidence, and you will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents, statements, or other

items by applying to the Rules and Regulations Committee of the Association.”

If any parties can promptly show good cause as to why they cannot attend on the date set for hearing and indicate time and dates on which they would be available, the Rules and Regulations Committee may reset the time and date of the hearing and promptly deliver notice of the new hearing dates. The respondent has a right to be represented by counsel.

4. NOTICE OF DEFENSE: Service of complaint and notice of hearing shall be accompanied by a “NOTICE OF DEFENSE”. The Notice of Defense shall state that the respondent may:
  - a. Attend the hearing before the Rules and Regulations Committee as hereinafter provided;
  - b. Object to the complaint on the grounds that it does not state the acts or omissions upon which the Rules and Regulations Committee may proceed;
  - c. Object to the form of the complaint on the grounds that it is so indefinite or uncertain that the respondent cannot identify the violation or prepare a proper defense.
  - d. Admit to the complaint in whole or part. In such event, the Rules and Regulations Committee shall meet to determine appropriate action or penalty, if any. Any objections to the form or substance of the complaint shall be considered by the Rules and Regulations Committee within ten (10) days of their receipt. The Rules and Regulations Committee shall make its determination and notify all parties within the stated ten (10) day period. If the complaint is found insufficient, the complaining party shall have seven (7) days within which to amend the complaint to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the Rules and Regulations Committee that the complaint is still insufficient, then the matter shall be dismissed by the Rules and Regulations Committee.
5. CEASE AND DESIST REQUEST: The Rules and Regulations Committee may, at its own discretion, issue a cease and desist request to the Unit Owner along with the complaint, statement to respondent, and Notice of Defense; such request shall be substantially in the following form:

“The Rules and Regulations Committee has reviewed the attached complaint.”

“By the authority of the By-laws and the Board of Directors of the Association, the Rules and Regulations Committee hereby requests that you CEASE AND DESIST such acts or actions until such time as the Rules and Regulations Committee or court of law can determine the validity of the complaint.”

“Failure to comply with this request may result in penalty greater than that which would be imposed for a single violation.”
6. AMENDED OR SUPPLEMENTAL COMPLAINTS: At any time prior to the hearing date, the Rules and Regulations Committee may file or permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the

manner herein provided. If the amended or supplemental complaint represents new charges, the Rules and Regulations Committee shall afford the respondent a reasonable opportunity to prepare proper defense thereto.

7. HEARING: A hearing shall be conducted by the Rules and Regulations Committee to afford all parties a chance to present or defend their case involving alleged violations of the Declaration of Condominium; the By-laws or the Rules and Regulations or applicable law. The hearing shall be held pursuant to the notice affording the alleged responsible Unit Owner or resident a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with the date and manner of delivery is entered by the Officer or Director who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the result of the hearing and the sanction, if any, imposed. All homeowners may attend an open hearing.

The following procedures shall be enacted for preparation and conduct of the Hearing:

- a. Discovery: Upon written request to the other party, either party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party, and; (2) inspect and make copies of any statements, writings and investigative reports relevant to the subject matter of the hearing. (Nothing in this Section, however, shall authorize the inspection or copying of any writing or document which is privileged from disclosure by law or otherwise made confidential or protected as an attorney's work product.) Any party who claims his request for discovery has not been complied with shall submit a petition to request discovery by the Rules and Regulations Committee. The Rules and Regulations Committee shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.
- b. Statements: At any time within ten (10) days or more prior to a hearing, any party shall mail or deliver to the opposing party a copy of any statement which that party proposes to introduce in evidence. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the statement's author, his right to, do so is waived and the statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to cross-examine the statement's author is not afforded as the request is made as herein provided, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.
- c. Constraints on the Rules and Regulations Committee: It shall be incumbent on each member of the Rules and Regulations Committee to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the cases before it. Any member incapable of such objective consideration of the case facts shall disclose such to the Rules and Regulations Committee and shall become inactive during the proceedings and have it so recorded in the minutes. Any member of the Rules and Regulations Committee has the right to challenge any other member who is unable to function in a

disinterested and objective manner.

- d. Hearing Procedures: The Rules and Regulations Committee shall select a person to serve as Hearing Officer and preside over the hearing. Such a person need not be a member of the Rules and Regulations Committee. At the beginning of the hearing, the Hearing Officer shall explain the rules and procedures by which the hearing is to be conducted.
  1. The Rules and Regulations Committee may determine the manner in which the hearing will be conducted, so long as the rights set forth in this Section are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant information and evidence shall be admitted if it is the sort of evidence or information which responsible persons are accustomed to rely upon in the conduct of serious affairs. Hearsay information and evidence may be used for purposes of supplementing or explaining other evidence or information entered, but shall not be sufficient in itself to support a finding.
  2. Neither the complainant nor the respondent must be in attendance at the hearing. At the request of respondent, the Rules and Regulations Committee may agree to conduct the hearing in private (closed) session.
  3. Each party shall have the right to do the following but may waive any or all of these rights:
    - a. make an opening statement
    - b. introduce evidence, testimony, and witness
    - c. cross-examine opposing witnesses
    - d. rebut evidence and/or testimony
    - e. make closing statement to Panel.
  4. Whenever the Panel has commenced to hear the matter at hand, and a member of the Panel withdraws prior to a final determination, the remaining members shall continue to hear the case and the Hearing Officer shall name a replacement for the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer.
8. **DECISION:** After all testimony and documentary evidence has been presented to the Panel, the Panel shall vote upon the matter. A majority of the Panel shall control. The decision may be made at the conclusion of the hearing or within a period of not more than ten (10) days thereafter. The Rules and Regulations Committee will prepare written findings of fact. A copy of the findings and recommendations and the sanction, if any, imposed by the Panel shall be served by the Rules and Regulations Committee on each party in the matter. A summary of the decision, excluding the names of the parties involved and addressing only the issues involved and the Panel's decision regarding the issue, shall be included in the following Board of Directors meeting minutes. Any proposed amendments

or revisions to the established Rules and Regulations, By-laws or Declaration of Condominium which may arise from the Rules and Regulations Committee decision shall be presented at that time as "new-business" for the Board of Director's consideration. Should the decision of the Rules and Regulations Committee in fact lead to an amended item, this amendment must then be adopted under the guidelines set forth within the By-laws and the general membership to be notified of such amendments.

9. **SANCTIONS:** Decisions of the Rules and Regulations Committee may include sanctions in the form of imposing or levying a fine not to exceed one hundred fifty dollars (\$150.00) for any one violation.
  1. All sanctions imposed by the Rules and Regulations Committee against a Unit Owner shall be deemed an Assessment.
  2. All such financial sanctions imposed by the Rules and Regulations Committee shall be referred to the Association Managing Agent or the Boards designee in order to charge the Unit Owner's account.
  3. All such financial sanctions imposed by the Rules and Regulations Committee which remain unpaid in excess of ninety (90) days from mailing of the decision of the Panel to the Unit Owner shall be deemed delinquent and collection and resolution guidelines in order to recover these sanctioned funds shall be dealt with as dictated by the Declaration of Condominium and the Bylaws of The Retreat at Franklin.
  4. Any Unit Owner which may receive a financial sanction may apply in writing to the board of Directors for either an extension of time to make proper restitution or make application for a payment plan. The acceptance of additional time to remit such payments or a payment plan may be accepted and approved by the Board of Directors of the Association only.

Failure to pay any fine by the end of the fifteenth day after such fine is incurred will subject the owner to a late charge of \$10.00 for each month the fine is outstanding. Payment of fines and damages must be delivered to the Board of Directors or its agent or employee within the above stated period of time.

### III. APPEALS

1. **RIGHTS OF OWNERS:** Within (ten) 10 days of a decision, the complainant, respondent, or applicant (as appropriate) may appeal the decision of the Panel to the Rules and Regulations Committee and then to the Association Board of Directors. This appeal may be made provided that all subordinate avenues of the resolution, as provided herein, have been pursued. The Association Board of Directors may make preliminary review of the circumstances and material facts relative to the case and make a determination as to whether it will hear the appeal. The Association Board of Directors may, on the basis of the preliminary review, elect not to hear the appeal, in which case the Association Board of Directors will so inform the appealing party in writing and the Rules and Regulations Committee decision shall stand.
2. **APPEAL PETITIONS:** Appeal petitions must be legibly written and be submitted to the Association Board of Directors in substantially the following format:

(Respondent/complainant), hereby petitions the Rules and Regulations Committee Association Board of Directors to hear an appeal of the decision of the Panel regarding the case of (complainant vs. respondent).  
(Respondent/complainant) further understands that within The Retreat at Franklin Owner's Association, the decision of the Board of Directors of the Association on this issue is final."
3. **NOTICE OF HEARING:** Notice of Hearing shall be as in Section I 3a of this Resolution except that it is served by the Association Board of Directors.
4. **PROCEDURES:** All of the rights and procedures enabled in Section II of this Resolution shall apply with the substitution of the words "Panel" or "Association Board of Directors" whenever the words "Rules and Regulations Committee" appears.
5. **EFFECT OF DECISION:** The Association Board of Directors may uphold the Rules and Regulations Committee's decision in its entirety modify or reverse such decision. In no event may the Appeal decision impose fines in excess of those issued by the Panel.
6. **FURTHER ACTION:** Any individual member must exhaust all available remedies of the Association prescribed by this Resolution before that Unit Owner may resort to a Court of Law for relief with respect to any alleged violation by another Unit Owner of any provision of the Declaration of Condominium, the By-laws or the Rules and Regulations. The foregoing limitation pertaining to the exhausting of administrative remedies shall not apply to the Association Board of Directors.

#### IV. SUMMARY

1. An informal request to cease an alleged violation should precede any written request.
2. Any unit owner, Association's Managing Agent, or Board member may initiate a formal written complaint against an alleged Unit Owner violator by completing The Retreat at Franklin Complaint form which is available at the Association's Managing Agent's Office. This form should be submitted to the Rules and Regulations Committee identifying the alleged violation, the person responsible, the relevant rule violated, and a description of all relevant facts.
3. After a preliminary investigation, if the Rules and Regulations Committee feels that sufficient information supports the alleged violation, a written request to cease and desist will be sent the alleged violator and responsible Unit Owner stating the alleged violation, the act(s) necessary to stop the violation, and date by which compliance must occur.
4. The alleged violator and responsible Unit Owner have fourteen (14) days from the written request to cease the alleged violation without further action by the Association.
5. If the violation continues, the Rules and Regulations Committee shall serve written notice of the violation upon the violator and responsible Unit Owner informing them of a hearing before the Panel at least thirty (30) days after the written notice is given. This will also include a notice of the possible defenses the alleged violator may assert.
6. A hearing will then occur according to the procedures within section II of this Resolution.
7. A decision shall be rendered by the Panel immediately at the conclusion of the hearing or within ten (10) days hence.
8. All sanctions imposed upon the Unit Owner responsible shall be deemed as Special Assessments.
9. Appeals of the Panel decision may be made in writing to the President of the Associations Board of Directors. If the matter is reviewed, all rights and procedures enabled in Section II of this resolution shall apply with the substitution of the words "Association Board of Directors" whenever the words "Panel" or "Rules and Regulations Committee" appear.
10. Appeal to a Court of Law is allowed only after all available remedies of the Association prescribed by this resolution are exhausted.

NOTE: In the event any of these Rules and Regulations conflict with North Carolina Statutory or Common Law, the applicable law shall control. In the event any provision is held to be unenforceable or invalid, such holding shall not impair the enforceability of any other valid provision.

End of Special Resolution #1