



After Recording Return to:
Keith D. Burns, Esq.
Morris, Manning & Martin, LLP
Post Office Box 12768
Research Triangle Park, NC 27709

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
ASHTON HALL**

This document prohibits the display of political signs.

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR ASHTON HALL**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made this ____ day of _____, 2007, by McCar Homes – Raleigh, LLC, a North Carolina limited liability company (hereinafter referred to as the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land approximately one hundred thirty four and eight hundred six thousandths (134.806) acres lying and being located in Durham County, North Carolina as shown on the Final Plat for Ashton Hall recorded in Plat Book ____, Page ____, Durham County, North Carolina Registry which is more particularly described on Exhibit A attached hereto (hereinafter referred to as the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create an association to own, operate and maintain the Area of Common Responsibility (as defined below), to administer and enforce the covenants and restrictions imposed hereby and to collect, hold, and disburse the charges and assessments provided in the Declaration; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a member of the Association and be subject to its rules, regulations, assessments and charges;

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership Owners association.

**ARTICLE I.
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth elsewhere in this Declaration.

"Additional Property" shall mean any and all real property lying and being within five (5) miles of the Property.

"Annual Assessment" shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

"Architectural Control Committee" ("ACC") shall mean those individuals with the authority to review plans and specifications as more fully described in Article VI of this Declaration.

"Area of Common Responsibility" shall mean the Common Areas, as further defined in Article III of this Declaration, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person become the responsibility of the Association.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

"Association" shall mean Ashton Hall Homeowners Association, Inc., a North Carolina non-profit corporation.

"Board of Directors" shall mean the body responsible for the administration of the Association, selected as provided in the Bylaws.

"Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

"Declarant" shall mean McCar Homes - Raleigh, LLC, a North Carolina limited liability company and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

"Declaration" shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

"Development Period" shall mean the period of time during which the Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the Register of Deeds.

"First Mortgage" shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority.

"Improved Lot" shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which has been sold to a Person who is not the Declarant.

"Lot" shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown on the Plat. The term "Lot" includes both "Improved Lots" and "Unimproved Lots"

"Member" shall mean a Person subject to membership in the Association pursuant to Article IV hereof.

"Owner" shall mean any Person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

"Person" shall mean a natural person, corporation, trust, partnership or any other legal entity.

"Plat" shall mean the Final Plat of ASHTON HALL prepared by _____, recorded in the Register of Deeds Office, at Plat Book ____, Page ____, together with all amendments thereto and any and all other plats that are hereafter recorded in the plat book records of the Register of Deeds, pursuant to the provisions of the Declaration.

"Property" shall have the meaning ascribed to it hereinabove.

"Register of Deeds" shall mean the Durham County, North Carolina Register of Deeds.

"Supplemental Declaration" shall mean an instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.

“Tree Save Areas” shall mean and refer to those areas of common open space and individual homeowner lots indicated as such on the final recorded plat(s) for the Property.

“Unimproved Lot” shall mean a Lot which is not an Improved Lot.

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

Section 1. Lots Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. Annexation of Additional Property. The Declarant may, at any time, and from time to time, prior to ten years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the Register of Deeds an amendment to this Declaration describing the property being annexed.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Register of Deeds covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject additional property to this Declaration.

Section 3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant.

Section 4. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 5. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant, the following non-exclusive perpetual easements for the enjoyment of Declarant, the Association, the Members, the Owners, and the successors-in-title of each:

(a) Easements Shown on Plat. Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plat as affecting and burdening such Lot.

(b) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(c) Authorized Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(d) Inadvertent Encroachments. Each Lot shall have a three foot easement as measured from the common boundary between such Lot and any adjoining Lot for purposes of driveways or fence encroachments which may be erected in said easement areas, unless such encroachment was due to a willful act of the Lot Owner.

(e) Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot.

ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to ten years from the date hereof.

The Common Areas shall be conveyed to the Association by limited warranty deed free of debt encumbrance, and subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Member's Rights in Association Property. Every Owner of any Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations. In addition, the Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. Easements Over Association Property. The Property and all Common Areas shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement across, in, under, over and through the Common Areas for purposes of the construction, installation, repair, maintenance and use of all utility and drainage facilities serving any portion of the Property;

(b) An easement in favor of Declarant for the exclusive use of such portions of the Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and Builders, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Notwithstanding any provision contained in this Declaration, the Bylaws, the Articles of Incorporation, use restrictions, rules and regulations, or any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided herein terminates, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by the Declarant, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking, areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, and model residences.

Section 4. Condemnation. In the event that any part of the Common Areas shall be either: (a) taken by any authority having the power of condemnation or eminent domain, or (b) conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 80% of the Class A votes (and, if during the Development Period, the written consent of Declarant), then the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within 60 days after such taking, at least 67% of the Class A votes (and Declarant, if during the Development Period) otherwise agree. The provisions of Section 5 below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least 67% of the Class A votes (and by Declarant, if during the Development Period), not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Class A Members, levy special assessments to cover the shortfall.

Section 6. Actions Requiring Owner Approval. Any conveyance or mortgaging of the Common Areas will require the consent of at least 80% of the Class A votes held by Members other than the Declarant and, if during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant easements over the Common Areas for installation and maintenance of

utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, without the approval of the Membership.

Section 7. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 8. Insurance. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the VA, and HUD, if and to the extent applicable to the Property. The Board of Directors shall obtain casualty insurance for all insurable improvements located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million Dollars applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 9. Taxes and Governmental Assessments. The Association shall pay when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Association's ownership or operation of the Common Elements and assessments for public and private improvements made to or for the benefit of the Common Elements. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. Upon default by the Owners' Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the common elements, which default shall continue for a period of six (6) months, each owner of a lot in the development shall become personally obligated to pay to the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of lots in the development. If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the owner.

Section 10. Watershed Protection. Amendments to Declarations, Bylaws or Articles of Incorporation relating to the maintenance and ownership of the permanent wet detention pond shall not be permitted without review and approval by the governmental office having jurisdiction for watershed protection. The association is responsible for maintaining the completed permanent wet detention pond as directed by the governmental office having jurisdiction for watershed protection. If the association should be dissolved or cease to exist, then in that event all the owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

ARTICLE IV. THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the Register of Deeds, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the members of the Association.

Section 2. Membership. Every Owner is and shall be a member of the Association. In no event shall such membership be severed from the Ownership of such Lot.

Section 3. Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A members shall be all those Persons holding an interest required for membership in the Association, as specified in of this Article, except for those Persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in writing delivered to the Association, or (ii) the termination of the Development Period. Until the earliest of these dates occurs, the Class A members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

(b) Class B. Declarant shall be the only Class B member. Class B membership shall be a full voting membership and, during its existence, the Class B members shall be entitled to vote on all matters and in all events. At such time as the Class A members shall be entitled to full voting privileges, as provided in paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's Lot in favor of the Association.

Section 5. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 6. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B member) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 7. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

ARTICLE V. ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for a Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the owner thereof, together with interest thereon and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (3) The Lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of the premiums for all insurance and fidelity bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its members.

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws) or at any time it deems best, the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). If North Carolina law requires that the Owners approve the budget, the budget shall be approved by the Owners in the manner and through the procedures specified by North Carolina law and specified in the Bylaws.

The assessments provided for herein shall commence as to a Lot on the date that Declarant transfers the Lot. Each Owner shall pay a portion of the annual budget that will be calculated by multiplying the total annual budget by a fraction, the denominator will be the number of Lots and the numerator will be the number of Lots that Owner owns. The Board of Directors shall send a copy of the budget so adopted as provided above, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot, prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in a single installment or in such multiple installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 5. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of any monument, landscaping, or other thing maintained by the Association, which is occasioned by the acts of individual Owners(s) and not the result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

The Board may also specifically assess Owners for the following Association expenses: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Upon the establishment of a specific assessment under this section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot and upon each resale of the Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment as set from time to time by the Declarant or Board of Directors of the Association. Such amount shall not exceed the amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. The Association shall use all special assessment payments which shall be so received by it pursuant to this section to establish a working capital reserve fund for use in connection with capital repairs and capital improvements. Declarant or Board shall endeavor to collect such special assessment at the closing of the purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain his personal obligation and shall also pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any

agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall bear interest from the date of delinquency at the lower of the rate of eighteen (18%) percent per annum or the highest rate permitted by law, and will be subject to a late charge in an amount to be set by the Board of Directors from time to time, provided that such amount must not exceed the maximum amount allowed by North Carolina law. In addition, the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 8. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association. As an alternative to the loan described above, the Declarant may require the Association to levy a special assessment in accordance with Section 4 above, in an amount necessary to cover any deficit.

Section 9. Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VI. ARCHITECTURAL CONTROL

Section 1. Architectural Control. (a) No exterior construction, alteration or addition of any nature whatsoever (including but not limited to a building, fence, wall, garage, patio, carport, playhouse, swimming pool or other structure, staking, clearing, excavation, grading, filling, change in color or type of any existing improvement, planting or removal of landscaping materials, exterior lighting, placement or installation of statuary, flags, fountains and similar items, improvements or modifications to the roof, material, color, paint stain or varnish, or the interior porches, patios or similar portions of a structure which are visible from outside the Lot), whether initial construction or remodeling of existing construction shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography. In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plan and specifications have been submitted to it, approval will not be required, and this section will be deemed to have been fully complied with.

(b) The plans and specifications, which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ACC may reasonably request in order to render a decision.

(c) The ACC shall, upon demand, furnish to any member of the Association a certificate in writing signed by a member of the ACC, stating that any exterior addition to, change in, or alteration of any structure or landscaping owned by such member on a Lot is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

(d) In the event that any construction or alteration or landscaping work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this section, said work shall be deemed to be in violation of this covenant, and the person upon whose Lot said work was undertaken or performed may be required to restore to its original condition, at his sole expense, the property upon which said work was undertaken or performed. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the Board of Directors shall determine.

Section 2. No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the ACC. In the event that the ACC does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place.

Section 3. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant upon any Lot while such Lot is owned by the Declarant. Any construction, alteration, addition or removal performed by the Declarant upon any Lot while such Lot is owned by the Declarant shall be exempt from the provisions of this Article.

Section 4. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be vested in the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish procedures for receiving and processing applications for approvals, rules regarding the contents of applications for approvals, and may charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property. Until one hundred (100%) percent of the Lots are Improved Lots, the Declarant retains the right to appoint all members of the ACC, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board's discretion.

ARTICLE VII. RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No

Lot shall at any time be used for any commercial, business or professional purpose. No Owner may rent an Improved Lot without the prior written consent of the Board of Directors, and in no event may greater than 20% of the Improved Lots be rented. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Improved Lot as said Declarant shall determine; or (b) the Owner of any Improved Lot from using a portion of a building located on such Improved Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Improved Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Improved Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, fixtures, appliances, machinery, bicycles, towels, equipment or other goods or chattels not in active use on any Lot which is visible from outside the Lot is prohibited except as specifically permitted in this Declaration.

Section 3. Nuisances. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 4. Animals. No Lot shall be used for the keeping or breeding of livestock animals or poultry of any kind. No Owner or Occupant may keep, breed or maintain any animal for any commercial purpose. No Owner may keep any pets other than a reasonable number of generally recognized household pets, as determined by the Board, on any portion of the Property. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors except that, to the extent permitted by local ordinance, an animal may be un-leashed if contained within a fenced area. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board's sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board may remove without notice any animal that presents an immediate danger to the health, safety or property of any resident.

Each Owner who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 5. Antennas; Aerials; Satellite Dishes. The Owner of each Lot shall have the right to install, maintain and use on such Lot one antenna, aerial, or satellite dish to receive video programming that is (i) not larger than one meter in diameter, (ii) blends with the color of the roof or wall where it is installed, and (iii) is installed so as not to be visible from the front of the Lot or street. No other exterior antennas, aerials, satellite dishes or other reception device shall be constructed, installed, placed or affixed unless approved in accordance with the Architectural Control provisions contained in the previous Article. Installation of an antenna deviating from the above provision shall be approved pursuant to the Architectural Control provisions if reasonably necessary to permit the reception of an acceptable quality signal. External antennae for HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 6. Clotheslines. No exterior clothesline of any type shall be permitted on any portion of any Lot.

Section 7. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary

name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 8. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. Garbage containers must be stored only in a screened location that is constructed of the same material as the siding of the house and that has been approved by the ACC or in the garage. Owners may place garbage containers at the curb or other location specified by the City of Durham for collection no more than twenty four (24) hours before the time scheduled for collection and must return garbage containers to the screened area or garage within forty eight (48) hours of collection. No person shall burn rubbish, garbage or any other form of solid waste on any Lot or within the right of way of any street in the Development.

Section 9. Vehicles and Parking. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a hard surfaced parking area or within a garage. No person shall park any oversized commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other water craft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property, with the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property.

The Association may promulgate rules regarding parking privileges on the Common Areas.

Section 10. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 11. Window Treatments. No bed sheets, towels, newspaper, tin foil, cardboard, or similar materials may be used as window treatments.

Section 12. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Property; (5) holiday decorative lights (which must be removed promptly following the holiday); or (6) front house illumination.

Section 13. Mailboxes. A mailbox conforming to requirements approved by the ACC shall be installed on each Lot. No changes or additions shall be made to the original mailbox or its design, materials or location without obtaining prior written approval from the ACC.

Section 14. Play Equipment. Recreational and playground equipment shall not be placed on the front or side yard of any Lot. Recreational and playground equipment may be placed in the rear of Lot, provided that the equipment is placed 15 feet or more from the rear of the Lot and 10 feet or more from either side of the Lot, and provided further that Recreational and playground equipment may be placed on a Lot which is adjacent to the Common Areas only with the prior written consent of the ACC. Materials, colors and other specifications shall be as provided in the Design Guidelines and otherwise approved by the ACC.

Section 15. Stoops, Driveways, Decks, Patio Areas and Storage Sheds. Grills, patio furniture and potted plants may be permitted on Patio Areas and Decks, subject to local ordinances and any rules promulgated by the Association with respect thereto; provided such grills, patio furniture or potted plants are not visible outside the Lot, and any grills, patio furniture or potted plants which are visible outside the Lot must receive the prior approval of the ACC. In addition, any items placed on Stoops and Driveways must comply with any rules promulgated by the Association with respect thereto. Detached storage buildings, sheds or animal pens are prohibited.

Section 16. Swimming Pools. No swimming pool or outdoor spa or hot tub shall be constructed, erected or maintained without prior approval of the ACC. In no event shall above ground swimming pools be allowed on any Lot.

Section 17. Trees. No healthy living trees having a diameter of six (6) inches or more measured from a point two (2) feet above the ground shall be removed after the Lot is an Improved Lot, unless such removal is approved by the ACC.

Section 18. No Subdivision of Lots. No Lot may be further subdivided into any smaller Lot.

Section 19. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness, the Board may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board shall send notice to all Owners concerning any proposed action on restrictions or rules at least ten business days prior to the Board meeting at which such action is to be considered. For this purpose, notice may be sent to each Owner by U.S. mail, electronic telecommunication with confirmation of receipt, or publication in the community newsletter delivered or mailed to each Owner provided that such notice is clearly identified under a separate headline in the newsletter. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Notwithstanding the above however, the Board shall have no authority to create new restrictions. New restrictions may be adopted only by amendment to this Declaration.

Section 20. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 21. Tree Save Areas. Damaging or destroying any trees located within the Tree Save Area, which is indicated on the final plat of the Properties, by the Association, an Owner, and/or any maintenance operation is prohibited and shall constitute a violation of the Durham Zoning Ordinance. Within all Tree Save Areas no cutting, clearing or removal of healthy trees will be permitted without the express written approval of the City of Durham's Planning Department.

ARTICLE VIII. MAINTENANCE

Section 1. Association's Maintenance Responsibility. The Association shall keep in good repair the Common Areas. If and to the extent the following facilities are not maintained by a governmental entity, the Association shall also maintain the Areas of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property; (b) all sidewalks; (c) any perimeter fencing required by the municipal authorities; (d) all landscaping within public right-of-way abutting the Property; (e) all storm water detention or drainage facilities serving the Property and (f) any recreational amenities that are determined by the Association to be part of its maintenance responsibilities.

In the event that the Association determines that any maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment.

Section 2. Owner's Maintenance Responsibility. All maintenance and repair of each Lot and all improvements thereon that are not addressed as being the responsibility of the Association in Section 1 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and improvements in a manner consistent with this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of litter and waste; keeping improvements, roofs and exterior structures and lighting in good working order and repair; complying with all governmental health and police requirements; repair of exterior damage to improvements; and caring for, mowing, pruning and maintaining lawns, yards and planting beds. In the event that the Board determines that any Owner has failed or refused to discharge properly such Owner's obligations hereunder, the Board shall have the right, exercisable by it or through its agents or employees, and after giving to the Owner of such Lot at least fourteen (14) days notice and an opportunity to correct the unsatisfactory condition (except in the event of an emergency situation, in which case no notice and opportunity to correct shall be required), to enter upon such Lot and correct the unsatisfactory condition. The Owner of the Lot upon which such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all the liens, and shall be subject to the same means of collection, as are the other assessments and charges provided for in this Declaration. In addition, all such costs shall be paid to the Association by such Owner at the same time as the next due Annual Assessment payment, or at such other time, and in such installments, as the Board shall determine.

Section 3. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will carry at all times all-risk casualty insurance on the Lot, all structures constructed thereon, as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Upon request by the Association, the Owner shall furnish a copy of such insurance policy to the Association.

ARTICLE IX. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot Number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds.

Section 4. HUD/VA Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by HUD for insuring or the VA for guaranteeing any Mortgage in the Development, and if required by HUD or VA regulations, then the following actions shall require the

prior approval of HUD and/or the VA as applicable: annexation of additional property and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE X. AMENDMENT

Except as set forth below, the terms, provisions, covenants and restrictions of this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 67% of the Lot Owners (other than Declarant) and approval of such amendment by the Declarant, so long as the Declarant owns any property for development and/or sale in the community. The approval of any such amendment by the members of the Association shall be given by each such member either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held.

This Declaration may also be amended unilaterally by Declarant if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to enable such lender or purchaser to make or purchase mortgage loans on the Lots, (d) such amendment is necessary to enable any governmental agency or private insurance company, including but not limited to HUD and the VA, to insure or guarantee mortgage loans on the Lots, provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing, or (e) such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner.

Any such amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court in the county where the Property is located within one year of the date of recordation of such amendment with the Register of Deeds.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

ARTICLE XI. MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer

