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NORTH CAROLINA
DURHAM COUNTY

FOR REGISTRATION REGISTER OF DEEDS
WILLIE L. COVINGTON
DURHAM COUNTY, NC
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MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
GATEWOOD FOREST

Made by:
Westfield Homes of North Carolina, Inc.

KNOW ALL MEN BY THESE PRESENTS, that this Master Declaration of Covenants, Conditions and Restrictions for Gatewood Forest (the "Declaration") is made and entered into on this _____ day of January, 2001 by Westfield Homes of North Carolina, Inc., a North Carolina corporation (hereinafter referred to as the "Declarant").

RECITALS

1. Declarant is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Community") together with any private streets, roads, bike paths, footways, Open Spaces, Common Areas, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any Recorded Plat (as hereinafter defined) (sometimes referred to collectively herein as the "Facilities") for the benefit of the Community.

2. Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and Common Area and, to this end, desires to subject the real property described in Article One, and any additions thereto, to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof.

3. The Declarant's present intention, stated here for information of present intent only and not as warranty or representation of a future fact, is to develop the Community with residential units of different styles, designs and construction. These may include, by way of example and not limitation, condominium units, townhouse dwellings, and individually owned single family lots upon which residences may be built, including patio homes or zero lot line homes.

4. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Community properties and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and spending the assessments and charges hereinafter created.

5. Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina, prior to the

sale of any Lot or Improved Lot (as hereinafter defined) in the Community, a non-profit corporation to be known as The Gatewood Forest Community Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

DECLARATION

NOW THEREFORE, the Declarant declares that the real property described in Article One, and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth, and furthermore that the "covenants and restrictions" hereof shall hereby entirely replace, supersede, and be in lieu of the terms, conditions, and covenants of the Original Declaration as if this Declaration has been recorded originally in place of the Original Declaration.

ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION

Section 1.1 Existing Property. The real property which is, and shall be, held, used, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Durham County, North Carolina, and is or will be commonly known as Gatewood Forest, and is depicted as Parcels 632H-04-001; 632H-04-002; 632H-04-003; 632H-04-004; 632H-04-005; 632H-04-006; 632H-04-012; 632H-04-013; 632H-04-014; 632H-04-015; 632H-04-016; 632H-04-017 containing in total 4.706 acres, more or less, all as shown on the Boundary Plat (hereinafter defined); and being thirteen lots more or less.

Section 1.2 Additions to Existing Property. Real property in addition to the Existing Property may hereafter become subject to this Declaration in the following manner:

a. Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that are contiguous to the Existing Property, as added to under the terms hereof, but such right shall cease to exist on January 1, 2010. Such additions must not be of more than 500 acres, must be approved by the City of Durham and may not conflict with legal declarations recorded in the Office of the Register of Deeds of Durham County.

The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Durham County one or more supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of the Declaration to such additional property or properties (hereinafter sometimes referred to as a "Supplemental Declaration").

Any Supplemental Declaration(s) may specify such specific use restrictions and other covenants, conditions and restrictions to be applicable to the added property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant and, if different owner(s), the owner(s) of the additional property, to reflect and adapt to any difference in character of the added properties. In no event, however, shall any such supplementary Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the Existing Property; however, this proviso shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the "assessments" (as hereinafter defined) payable by a Member of the Association by reason of any such additions.

b. Other Additions. Upon approval in writing of the Association, pursuant to authorization by a two-thirds (2/3) or more vote of each class of Members, voting as provided in Section 8.2 hereof at a duly called meeting, the owner of any property who desires to add such property to the scheme of this Declaration and subject such property to the jurisdiction of the Association must file of record a Supplemental Declaration as described in subsection (a) above. Any approval by the Association pursuant to this subsection shall be evidenced by the Association executing any such Supplemental Declaration(s). The Declarant shall have the right to approve any such addition to the scheme of this Declaration except during such times when Class II membership is terminated pursuant to Section 8.2(b).

c. Mergers. Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights,

and obligations of another association may, by operations of law, be added to those of the Association as the surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the restrictions established upon any other properties, as one scheme. No such merger, combination or consolidation, however, shall effect any revocation, change or addition to, the covenants and restrictions established by this Declaration within the Existing Property, except as herein provided.

d. Conveyance of Common Areas and/or Common Properties. Following the recording of a Supplemental Declaration but prior to the conveyance of the first lot within the additional property, the owner of the additional property shall convey to the Association title of all Common Areas and Common Properties located within the additional property. Title shall be conveyed to the Association in the same manner as set forth in Section 9.3.

Section 1.3 Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within The Properties, if any, for access to and from other real property of Declarant or its successors and/or assigns. Such easement shall continue until that time when all new construction has ceased on additions to existing property acquired under this Section 1, and any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within The Properties when exercising its rights created by this Section 1.3 shall be repaired at the expense of Declarant, its successors, or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads within The Properties, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

ARTICLE TWO: ADDITIONAL DECLARATIONS

Additional covenants and restrictions applicable to only certain Lots, Improved Lots, Common Properties or Limited Common Properties within The Properties may be established from time to time in the form of a neighborhood declaration ("Neighborhood Declaration") pursuant to Section 8.5 hereof.

Neighborhood Declarations executed by the Declarant or the Association may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Neighborhood burdened by the Neighborhood Declaration in order to reflect the different character and intended use of such Neighborhood, but they shall not in any event create a reduction in annual assessments due hereunder. Unless a Neighborhood Declaration is executed by the Declarant or the Association, however, a Neighborhood Declaration may not relax or waive any standards or rules enunciated in this Declaration.

Certain obligations of the Association established herein may be delegated by the Association to an association created in connection with a Neighborhood Declaration (a "Neighborhood Association") if there is a reasonable nexus between the obligation delegated and the property encumbered by the Neighborhood Declaration and if the Neighborhood Association assumes responsibility for such obligation. Neighborhood Associations and Neighborhood Declarations shall be established in accordance with the provisions of Section 8.5 hereof.

ARTICLE THREE: DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

"Assessment(s)" shall mean and refer to the Assessment(s) and charges levied by the Association against Members who are the Owners of Lots or Dwelling Units in The Properties and shall include annual, special and Special Individual Assessments as described in Article Ten of this Declaration.

"Association" shall mean and refer to The Gatewood Forest Homeowners Association, Inc.

"Board" shall mean and refer to the Board of Directors of the Association.

"Boundary Plat" shall mean and refer to that certain plat of survey originally recorded in Book of Maps 150, Page 151, Durham County Registry, and later rerecorded in Book of Maps 151, Pages 91-92, Durham County Registry, which survey depicts all of the property to be encumbered and benefited by this Declaration at the time of the recording hereof, but additional property may be added hereunder as provided for in this Declaration.

"Builder" shall mean and refer to a person or entity who in the regular course of business purchases Lots and becomes the Owner of such Lots solely for the purpose of constructing improvements thereon for resale to their successors and assigns and not for the purpose of residing in such improvements. No successor or assignee of Builder shall have any rights or obligations of a Builder hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law. The rights and obligations set forth herein of a Builder shall cease when all of the Lots owned by such Builder have been purchased and settled on by an Owner or Owners other than Builder or Declarant, or as otherwise provided in Section 10.13.

"Bylaws" shall mean and refer to the bylaws of the Association and all amendments thereto.

"City Attorney" shall mean and refer to the City Attorney or the Deputy City Attorney of the City of Durham, North Carolina, or anyone authorized by either of them to act on their behalf.

"Committee" shall mean and refer to the architectural control committee established pursuant to Article Five hereof.

"Common Expenses" shall mean and refer to:

- a) Expenses of administration, operation, utilities, maintenance, repair or replacement of the Common Properties, including payment of taxes and public assessments levied against the Common Properties;
- b) Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
- c) Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in The Properties, in accordance with the Bylaws or this Declaration.
- d) Any valid charge against the Association or against the Common Properties as a

whole.

- e) Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation.

"Common Property(ies)" or "Common Area(s)" shall mean and refer to those areas of land described or referred to as "Common Property", "Common Properties", "Common Area", "Common Areas" or "Open Spaces" in any declaration of covenants, conditions and restrictions to which The Properties are submitted or subjected by the Declarant, or shown on any Recorded Plat, executed by the Declarant and any other owner of such areas of land, of The Properties and labeled thereon as "Common Property", "Common Properties", "Common Area", "Common Areas" or "Open Spaces", or shown on a Recorded Plat as private streets, roads, bike paths, or pedestrian walking easements (together with all improvements located thereon), which are a part of The Properties and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots, Dwelling Units, or Improved Lots. The Common Properties shall also include any stormwater device that serves more than one (1) Lot, any utility line located outside public street rights-of-way and public utility easements, and serving more than one (1) Lot, and any shared facility or property required to be shared by the Durham City Code. The Common Properties shall not include the Limited Common Properties. The Common Properties shall include Recreational Facilities, if any, constructed by the Declarant or the Association, as described in Article Twelve hereof.

"Community" shall have the meaning assigned to it in the Recitals of this Declaration.

"Declarant" shall mean and refer to Westfield Homes of North Carolina, Inc., a North Carolina corporation its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Durham County Registry.

"Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of

ownership) located within The Properties and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family detached homes, single family attached homes, such as townhouses and condominium units, and patio or zero lot line homes. Each unit in a Multi-Family Dwelling constitutes a Dwelling Unit. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated.

"Existing Property" shall have the meaning assigned to it in Section 1.1 of this Declaration.

"Facilities" shall have the meaning assigned to it in the Recitals of this Declaration.

"FHA" shall mean and refer to the United States Federal Housing Authority.

"HUD" shall mean and refer to the United States Department of Housing and Urban Development.

"Improved Lot" shall mean and refer to any improved parcel of land within The Properties which was formerly a Lot and is intended for use as a Dwelling Unit or a Multi-Family Dwelling. A parcel of land shall be deemed to be improved when the improvements constructed thereon have received a certificate of occupancy.

"Landscape Buffer Area" shall have the meaning assigned to it in Section 6.28 of this Declaration.

"Landscape Plan" shall have the meaning assigned to it in Section 6.11 of this Declaration.

"Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Areas or any valid charge against the Limited Common Properties as a whole. Such expenses shall be assessed against those Lots or Dwelling Units having the exclusive or special rights in the use or enjoyment of the Limited Common Properties.

"Limited Common Property(ies)" or "Limited Common Area(s)" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements (including without limitation any common entrances to a Multi-Family Dwelling) shown on or designated as "Neighborhood Common Property", "Neighborhood Common

Properties", "Neighborhood Common Area", "Neighborhood Common Areas", "Limited Common Property", "Limited Common Properties" "Limited Common Area", "Limited Common Areas" or "Limited Open Space" on any Recorded Plat, and intended for the use of the Owners of particular Lots, Improved Lots or Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units, Improved Lots or Lots so designated on the Recorded Plats. Common elements of a condominium are also "Limited Common Areas".

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit, which shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

"Lot" shall mean and refer to any unimproved numbered parcel of land within The Properties which is intended for use as a site for a Dwelling Unit or Multi-Family Dwelling, as shown upon any Recorded Plat of any part of The Properties and labeled thereon as a "Lot", and shall not include Improved Lots, Common Properties, Limited Common Properties, or any property in The Properties not yet subdivided for sale as an individual lot. No property in The Properties shall be developed as a Dwelling Unit or a Multi-Family Dwelling until designated as a Lot on a Recorded Plat. Property designated as a Lot may later be designated for some other use on a Recorded Plat.

"Member" shall mean a member of the Association and shall refer to an Owner in The Properties.

"Multi-Family Dwelling" shall mean and refer to any Improved Lot located within The Properties intended for use and occupancy as more than one Dwelling Unit and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by limitation) condominiums. Where appropriate by context, the term shall include the improvements and the real property on which the improvements are situated, which real property would be the common element of all Dwelling Units on a Multi-Family Dwelling Lot on which condominiums are located.

"Neighborhood" shall mean and refer to a contiguous or closely related set of Lots, or Improved Lots, in The Properties that are to be governed by a common set of design standards and served by and governed by a Neighborhood Association formed for the express purpose of governing and serving such Lots and Improved Lots and any Limited Common Area in connection therewith in accordance with the terms of

a Neighborhood Declaration.

"Neighborhood Assessment" shall mean and refer to the assessment(s) and charges levied by a Neighborhood Association.

"Neighborhood Association" shall have the meaning assigned to it in Article Two of this Declaration.

"Neighborhood Declaration" shall have the meaning assigned to it in Article Two of this Declaration.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon The Properties. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Member" and "Owner" are meant to describe all of the owners of The Villages of Tryon interchangeably as semantics dictate throughout this Declaration.)

"Plans" shall have the meaning assigned to it in Section 5.2 of this Declaration.

"Durham City Code" shall mean and refer to the Code of Ordinances of the City of Durham, North Carolina, as amended from time to time.

"Recorded Plat" shall mean and refer to any map of The Properties, or any portion thereof, recorded in the Durham County Registry and executed by the Declarant or the Association to show its consent thereto (and any Owner(s) of such property if different). In any case in which the designation and/or boundary lines of the same property shown on two different Recorded Plats are different (for example, property is designated as a street on one plat and as a Lot on the other, or boundary lines are shown differently on two different Recorded Plats), the designation and boundary lines on the later-recorded of the Recorded Plats shall control.

"Recreational Facilities" shall have the meaning assigned to it in Article Twelve of this Declaration.

"Special Individual Assessments" shall have the meaning assigned to it in Section 10.5 of this Declaration.

"Supplemental Declaration" shall have the meaning assigned to it in Section 1.2 of this Declaration.

"The Properties" shall mean and refer to all the Existing Property and any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of this Declaration.

"Gatewood Forest" shall mean and refer to that community consisting of single family lots and residences, multi-family parcels and recreational and supporting facilities, in Durham County, North Carolina, in the City of Durham, situated on approximately 4.706 acres of land more particularly shown on the Boundary Plat as Parcels 632H-04-001; 632H-04-002; 632H-04-003; 632H-04-004; 632H-04-005; 632H-04-006; 632H-04-012; 632H-04-013; 632H-04-014; 632H-04-015; 632H-04-016; 632H-04-017; and being 13 lots more or less. The Declarants may make additions to the Existing Property in accordance with the provisions of this Declaration.

"VA" shall mean and refer to the United States Department of Veterans Affairs.

ARTICLE FOUR: GENERAL PROVISIONS

Section 4.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit, or, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended in accordance with the provisions of Article 13 hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof. The terms and conditions of this Declaration may also be amended as to a particular Neighborhood, but only in strict accordance with the provisions of Article Two hereof.

Section 4.2 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and

addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Durham County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Dwelling Unit to be examined. Notice to any one of the Owners, if title to a Lot or Dwelling Unit is held by more than one, shall constitute notice to all Owners of that Lot or Dwelling Unit.

Section 4.3 Enforcement. The Association and/or any Owner may enforce these covenants and restrictions. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 4.4 Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 4.5 Cluster Unit Development. The Properties are part of a cluster unit development, approved by the City of Durham, in which residential density transfers are permitted; therefore, even though some Lots or Improved Lots may appear to contain enough land area to construct additional Dwelling Units or create additional Lots or Improved Lots, prior density transfers approved within the cluster unit development may, in fact, preclude approval by the City of Durham of additional Dwellings or further subdividing of Lots or Improved Lots.

Section 4.6 Density. The Community is zoned R-10 with a metro park overlay. The Existing Property at the time of the recordation of this Declaration consists of approximately 4.706 acres. Based on the existing zoning of the area, the maximum density for the area without rezoning is approximately 30 Dwelling Units. The maximum area allowed to be developed hereunder includes an additional 28.202 acres, and would have an overall maximum density of approximately seven Dwelling Units per acre and 250 total Dwelling Units if an additional 28.202 acres is in fact

annexed and all of such area is subject to zoning of R-10. Density may exceed the density prescribed for such property in some portions of the Community so long as the total density for the entire Community does not exceed the amount allowed by the applicable zoning of the Community.

ARTICLE FIVE: ARCHITECTURAL CONTROL

Section 5.1 Purposes. The Declarant desires to provide for the preservation of the values in The Properties with respect to vegetation and any improvements to be constructed or altered on any Lot or Improved Lot constituting a portion of The Properties, and to that end, will establish an architectural control committee, in accordance with Section 5.3 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot or Improved Lot in relation to surrounding structures, natural features and topography.

Section 5.2 Architectural Control. Unless expressly authorized in writing by the Committee, no Dwelling Unit, Multi-Family Dwelling, fence, wall, driveway, patio, swimming pool, building or other structure or improvement whatsoever shall be constructed or maintained, nor shall any exterior addition or alteration to any Dwelling Unit, Multi-Family Dwelling, fence, wall, driveway, patio or other building or structure or improvement be started, nor shall a clearing or site work be commenced or maintained upon any Lot or Improved Lot in The Properties, until plans and specifications therefore showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefore (all of which are hereinafter referred to collectively as the "Plans"), and any application fee set by the Association, shall have been submitted (the Plans in triplicate) to, and approved in writing by, the Committee, as to harmony of external design and location in relation to any surrounding structure, natural features and topography. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. The Committee may promulgate design standards from time to time to be adhered to by the Plans for the Lots, Improved Lots or Dwelling Units in The Properties, and it may promulgate different standards for different Neighborhoods. A current copy of all design standards shall be kept on file in the

principal office of the Association.

In no event shall the Committee approve any Plans in which the height or setback of the improvements on the Lot or Improved Lot violates the limits established by the City of Durham.

Furthermore, notwithstanding the foregoing, the Committee may (1) set restrictions that conflict with those established generally for The Properties which apply to only a set of Lots or Improved Lots comprising a Neighborhood and/or (2) delegate to the Neighborhood Association its authority to approve Plans and vary the setbacks as described above for the Lots or Improved Lots in such Neighborhood.

Section 5.3 Architectural Control Committee.

a) Membership: Right of Declarant to Act as Committee with Respect to Initial Construction.

(i) The Committee shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and addresses of any designated representatives of the Committee, and such a list shall be available in the principal office of the Association to any Owner upon request.

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the Committee responsible for the review, approval, and monitoring of construction of improvements. This right of the Declarant pursuant to this section shall cease during times when the Declarant does not own any of the property comprising any portion of The Properties, or January 1, 2010, whichever event shall first occur. Following the determination that a Lot qualifies as an Improved Lot, any requests for modifications or alterations of improvements in fact constructed on an Improved Lot or for the construction

of additional improvements on an Improved Lot shall be the responsibility of the full Committee, which need not be the Declarant if it so directs. The Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the initial construction of improvements as the Committee, as hereinabove described.

b) Procedure. At least forty-five (45) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Lot, Improved Lot, or Dwelling Unit in writing as to whether the Plans have been approved. Unless a response is given by the Committee within thirty (30) days, the Plans shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, Improved Lot or Dwelling Unit, and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity with the approved Plan. The Committee shall have the right to monitor construction of improvements and investigate compliance with the approved Plan, and hereby reserves the right to enter upon any Lot or Improved Lot in order to do so.

Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging improvements or infrastructure of Gatewood Forest, and the Owner(s) who engaged the services of such contractor, shall be jointly and severally liable for such damage. The Committee may from time to time, in its sole discretion, require of any contractor or Owner a case or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements on The Properties.

Any Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the

decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman of the Committee the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner or his agent and the Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by simple majority vote of the Board. The foregoing provision shall not be applicable to decisions by the Declarant as to the Initial Construction of Improvements pursuant to Section 5.3(a)(ii).

The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner of the Lot or Dwelling Unit as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Dwelling Unit and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express), and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. If the Committee approves the Plans, one set of Plans, denoted as approved (or approved with specified conditions), shall be retained by the Committee, and the other two sets shall be returned to the applicant.

c) Application of this Article.

(i) This Article Five shall apply to any additions to the Existing Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

(ii) Repainting, reroofing, minor

repairs, and the like shall not require the approval of the Committee if done or made in accordance with the construction or design guidelines promulgated or adopted by the Committee or the Association.

(iii) As to any property governed by a Neighborhood Declaration that includes an architectural control provisions that affirmatively states that this Section of this Declaration shall not apply to properties in such Neighborhood, this Section shall have no force and effect, and the Neighborhood Association's architectural control committee shall instead serve as the Committee, as specified in and under the terms of the Neighborhood Declaration.

ARTICLE SIX: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS

Section 6.1 Permissible Uses. No Lot or Improved Lot shall be used except for residential purposes allowed under applicable zoning regulations (with the exception of any sales center or model home constructed or used by the Declarant, his agent or any builder who has received the prior written permission of Declarant). Specifically, no "Model Home" or "Open House" type of operation shall be allowed within The Properties other than with Declarant's explicit written permission, notwithstanding, Declarant's right to operate such "Model Home" or "Open House," at its discretion, anywhere within The Properties at any time prior to January 1, 2010. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit or a Multi-Family Dwelling and its accessory building(s), which shall comply with any applicable zoning regulations and the requirements of Articles Five and Six of this Declaration.

Section 6.2 Division of Lots: No Time Sharing.

a) No Lot or Improved Lot shall be further subdivided into multiple Dwelling Units, except (i) in the case of condominiums on such Lot or, (ii) with respect to single-family Dwellings, any two Owners may divide a Lot between them if such Lot is adjacent to the Lots or Improved Lots owned by such Owners and provided further that no more than two (2) Dwelling Units may be constructed on the three (3) recombined Lots and Improved Lots (once recombined into a total of two (2) Lots or Improved Lots). In event of such a recombination, the sideline setbacks and sideline easements shall be released as to the old interior common sidelines and become applicable to the new common sideline

created within the old shared Lot.

In addition, all Owners are hereby advised that The Properties comprise a cluster unit development, approved by the City of Durham, in which residential density transfers are permitted. Therefore, even though some Lots or Improved Lots may appear to contain enough land area to construct additional Dwelling Units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude approval by the City of Durham of additional Dwelling Units or of further subdivision of Lots or Improved Lots.

b) No Lot, Improved Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership unless approved by the Association subject to conditions which may be imposed by the Association. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

Section 6.3 Water and Sewer Facilities. Water and sewer treatment services shall be provided through the City of Durham. Water and sewer services shall be extended to all Lots and Improved Lots, prior to transfer of title of such Lot or Improved Lot by the Declarant to any Owner other than a builder who had acquired title for the purpose of constructing improvements thereon with no intention of occupying the improvements.

Section 6.4 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground or against or in the building in the case of a Multi-Family Dwelling. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time

known or unknown, to The Properties on, in, under and over the private streets or roads and over any Lot or Improved Lot, and over such areas as are so identified on any recorded plats of The Properties or shown on any Site Plan for The Properties on file with and approved by the City of Durham. In addition, the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the easements reserved, Declarant also reserves the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class II membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property.

The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot or Improved Lot for which it deems such easement is unnecessary for the efficient development and operation of The Properties, but it may do so only until one year after Class II membership has last terminated. In addition, the Declarant may delegate its authority, until one year after Class II membership has last terminated to release any of the easements reserved herein as to several Lots or Improved Lots to a Neighborhood Association established to govern such Lots and Improved Lots.

There is also reserved by Declarant, for itself, and its successor or assigns, and for the State of North Carolina, within The Properties, a perpetual easement to enter any Lot or Improved Lot at reasonable times and hours of the day in order to do necessary groundwater monitoring, to include the installation and pumping of groundwater wells, or for the purposes of remediation of groundwater contaminants.

Section 6.5 Minimum Square Feet in Dwelling Unit. The Association reserves the right to establish minimum square foot standards for Dwelling Units from time to time and of varying amounts in various portions of The Properties. Such standards shall not be retroactive. The Association may also delegate its right to set a minimum square foot standard for

a given Neighborhood of The Properties to a Neighborhood Association for such area if one has been created.

Section 6.6 Temporary Structures. No structure of a temporary character shall be placed upon any portion of The Properties at any time, provided, however, that this prohibition shall not apply to shelters or sheds used by contractors during the construction of a Dwelling Unit or Multi-Family Dwelling, or improvements or additions thereto, on any Lot or Improved Lot. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of The Properties.

Section 6.7 Committee Approval of Plans and Other Prohibitions.

a) The construction of improvements on Lots and Improved Lots shall be governed by Sections 5.2 and 5.3 hereof. In addition, Dwelling Units and Multi-Family Dwellings shall comply with all applicable building, plumbing, electrical and other codes.

b) No garage, storage shed, or carport shall be permitted on an Improved Lot unless architecturally compatible with the primary Dwelling Unit or the Multi-Family Dwelling on the Improved Lot.

c) No vent or other pipes or appendages may extend from the front of any Dwelling Unit or Multi-Family Dwelling, unless screened from public view by a screening material or shrubbery approved by the Committee.

d) Any exterior air-conditioning or heating equipment and any natural gas storage facility must be screened from public view by a screening material or shrubbery approved by the committee.

e) Downspouts and gutters must be constructed so as not to promote the erosion of the soil of any Lot, Improved Lot or Dwelling Unit.

f) Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Lot or Improved Lot or interfere with the quality of the night environment.

g) No mobile homes or trailer homes shall be allowed or approved by the Committee as the residence on any

Lot or Improved Lot, and no mobile home or trailer home shall be allowed to remain on any Lot or Improved Lot. "Mobile homes" shall not include modular homes that do not rest on wheels once placed permanently on the Lot or Improved Lot for the purpose of living therein.

Section 6.8 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables if such a program is in place in the City of Durham), and all garbage receptacles, tools and equipment for use on a Lot or Improved Lot, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Improved Lot. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Properties.

Section 6.9 Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties. Job site debris shall be removed from the (job site) Lot or Improved Lot at least semi-weekly.

Section 6.10 Antennas. Any television antennas, radio receiver or sender antenna or other similar device attached to or installed on the exterior portion of any Dwelling Unit, Multi-Family Dwelling or structure, or placed on any Lot or Improved Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the Committee).

Section 6.11 Landscape Plan: Landscaping. As part of the Plans package submitted by an Owner to the Committee for approval of such Owner's Plans for the initial construction of improvements, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the location and specifications for all terraces, walkways,

driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and the specifications for other fixtures and structures envisioned to be constructed as part of the Landscape Plan.

The Landscape Plan should seek to unite the Dwelling Unit or Multi-Family Dwelling as well as all other structural aspects of the landscape with its setting and should provide for the introduction of plant materials of sufficient size and quantity to create (when first installed) a sense of maturity to the landscape scene.

Each Dwelling Unit and Multi-Family Dwelling shall be maintained consistently with the Landscape Plan approved for it by the Committee. All material changes to the Landscaping Plan or the landscaping installed on a Dwelling Unit or Multi-Family Dwelling shall be first approved by the Committee. The Committee shall have the authority to create landscaping guidelines, which may vary by Neighborhood, with which each Dwelling Unit and Multi-Family Dwelling shall comply.

Section 6.12 Trees and Foliage. Trees measuring three (3) inches or more in diameter (9 3/8 inches in circumference), at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from The Properties without the prior written approval of the Committee, unless located within ten (10) feet of a Dwelling Unit or Multi-Family Dwelling, or site for such Dwelling Unit or Multi-Family Dwelling, or in the path of driveways and walkways located or to be located on any Lot or Improved Lot. Excepted herefrom shall be damaged or diseased trees or trees to be removed because of a reasonably perceived threat of harm to persons or property.

Section 6.13 Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions to exist on his Lot, Improved Lot, Dwelling Unit, Multi-Family Dwelling, or grounds which shall tend to decrease the beauty of The Properties, specifically or as a whole.

During the construction of any improvement to a Lot or Improved Lot in The Properties, the Lot or Improved Lot, roads, bike paths, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common

Areas, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot, Improved Lot or Dwelling Unit, and adjoining areas, as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot, Improved Lot, or Dwelling Unit, and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot, Improved Lot or Dwelling Unit, as appropriate, until paid.

Section 6.14 No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Properties. Fires on any Lot or Improved Lot or on any portion of the Common Properties or the Limited Common Properties are prohibited except as permitted by the appropriate governmental authority.

Section 6.15 Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of other Owners, or tenants and guests thereof, may be maintained on a Lot or Improved Lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Improved Lot, except that a reasonable number, but no more than three, dogs, cats or other household pets may be kept in each Dwelling Unit, unless otherwise approved by the Board, provided that they are not kept, bred or maintained for any commercial purpose. At no time shall any household pets be allowed to run free, and at all times when off the Owner's Lot or Dwelling Unit, such household pets shall be on a

leash.

Section 6.16 Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Properties is prohibited.

Section 6.17 Motorized Vehicles. All motorized vehicles operating within The Properties must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within The Properties.

Section 6.18 Prohibited Parking. No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a one ton truck or larger) shall be allowed to remain on any Lot or Improved Lot or on any portion of the Common Properties or Limited Common Properties overnight unless it is enclosed within a garage that has been constructed in accordance with the provisions of this Declaration.

Section 6.19 Signage. No commercial signs, except "For Sale" or "For Rent" signs, shall be displayed in public view on any Lot, Improved Lot, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Committee, who may also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant, subject to the Durham City Code, shall have the right to locate sign or signs indicating the location of sales and rental centers, identify model homes or living units and their builder, any Recreational Facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at the The Villages of Tryon.

Section 6.20 Pavement of Joint Walkways and Driveways. Any joint walkway or driveway shown on any Recorded Plat of The Properties, if and when improved, shall be improved and maintained by the Owners of the Lots or Improved Lots on which such joint walkway or driveway abuts. If one of the Lot Owners fails to maintain its portion of the driveway, the other Owner may, at his sole discretion, undertake this maintenance work and shall have a right of contribution for such maintenance work. Each Lot Owner shall have the right to construct the entire joint walkway or driveway.

