

BK011848PG02038

WAKE COUNTY, NC 231
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
03/07/2006 AT 12:13:44

BOOK:011848 PAGE:02038 - 02063

After Recording Return to:
Keith D. Burns
Morris, Manning & Martin, L.L.P.
PO Box 12768
Research Triangle Park, NC 27709

**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
WESTON PLACE
WAKE COUNTY, NORTH CAROLINA**

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS..... 1

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION..... 3

Section 1. Lots Hereby Subjected to this Declaration..... 3

Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration..... 3

Section 3. Annexation of Additional Property 3

Section 4. Withdrawal of Property 4

Section 5. Lot Boundaries 4

ARTICLE III. ASSOCIATION PROPERTY 4

Section 1. Common Areas and Association Property 4

Section 2. Member's Rights in Association Property 4

Section 3. No Partition 5

Section 4. Condemnation 5

Section 5. Damage or Destruction 5

Section 6. Actions Requiring Owner Approval..... 5

ARTICLE IV. EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY..... 5

1. Easements and Agreements Regarding Association Property..... 5

Section 2. Easements over Lots 6

Section 1. The Association..... 7

Section 2. Membership..... 7

Section 4. Suspension of Membership Rights 7

Section 5. Meetings of the Membership 8

Section 6. Association Acts Through Its Board of Directors..... 8

Section 7. Professional Management..... 8

ARTICLE V. ASSESSMENTS..... 8

Section 1. Creation of Lien and Personal Obligation 8

Section 2. Purposes of Assessments 8

Section 3. Determination of Annual Assessment and Shares Thereof..... 8

Section 4. Special Assessments..... 9

Section 5. Specific Assessments..... 9

Section 6. Special Assessment for Working Capital Reserve..... 10

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association 10

Section 8. Budget Deficits during Declarant Control Period..... 10

Section 9. Failure to Assess..... 10

ARTICLE VII. ARCHITECTURAL CONTROL..... 10

Section 1. Architectural Restrictions 11

Section 2. Architectural Control Committee 11

Section 3. Exterior Structure or Improvement 11

Section 4. Approval Procedures 11

Section 5. Construction Period..... 12

Section 6. No Waiver of Future Approvals 12

Section 7. Variance..... 12

Section 8. Limitation of Liability..... 12

Section 9. Enforcement..... 12

Section 10. Declarant Exemption 12

ARTICLE VIII. RESTRICTIONS..... 13

Section 1. Residential Use 13

Section 2. Prohibited Activities 13

Section 3. Animals..... 13

Section 4. Antennae; Aerials; Satellite Dishes..... 13

Section 5. Lighting..... 14

Section 6. Mailboxes 14

Section 7. Signs 14

Section 9. Trash Containers and Collection 14

Section 11. Vehicles and Parking 14

Section 12. Window Air-Conditioners..... 14

Section 13. Window Treatments 14

Section 14. No Subdivision of Lots or Timesharing 15

Section 15. No Combination of Lots 15

Section 8. Decks, Patio Areas, Stoops, Driveways and Sheds..... 15

Section 16. Interpretation..... 15

ARTICLE IX. MAINTENANCE OF TOWNHOMES 15

Section 1. Association’s Maintenance Responsibility 15

Section 2. Owner’s Maintenance Responsibility 16

Section 4. Damage or Destruction 16

Section 3. Party Walls..... 16

ARTICLE X. INSURANCE..... 16

Section 1. Insurance on Common Areas..... 16

Section 2. Insurance on Townhomes 17

Section 3. Individual Insurance..... 17

Section 4. Additional Insurance Requirements 17

ARTICLE XI. MORTGAGEE PROVISIONS 19

Section 1. Notice of Action 19

Section 2. Audit..... 19

Section 3. No Priority 19

Section 5. Failure of Mortgagee to Respond 19

ARTICLE XII. MISCELLANEOUS..... 20

Section 1. Failure of Enforcement 20

Section 2. No Waivers..... 20

Section 3. Duration..... 20

Section 4. Notices 20

Section 5. Severability 20

Section 6. Judicial Proceedings 20

Section 7. Successors to Declarant..... 21

BK011848PG02041

DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR WESTON
WAKE COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by MCCAR HOMES-RALEIGH, LLC, successor by name change to MDC HOMES-RALEIGH, LLC., a North Carolina limited liability company (the "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land lying and being in Wake County, North Carolina, as shown on the legal description attached hereto as Exhibit "A", incorporated herein, less and except any portions thereof dedicated to Wake County, North Carolina (the "Property"), which Property has been subjected to the Weston Declaration of Master Protective Covenants recorded in Book 3693, Page 456, Wake County Registry (the "Master Declaration"); and

WHEREAS, in addition to the Master Declaration, 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 Weston Place Property Owners Association, Inc. to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

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

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association pursuant to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, *et seq.*

**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 in the recitals and 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 all Units 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" shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control".

BK011848PG02042

"Area of Common Responsibility" shall mean the Common Areas, 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 Weston Place Property Owners Association, Inc., a North Carolina corporation.

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

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

"Common Areas" shall mean, singularly or collectively, as applicable, all land, improvements and other properties which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners.

"Community Wide Standards" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by Declarant and may be more specifically determined by the Architectural Control Committee.

"Declarant" shall mean McCar Homes-Raleigh, LLC, successor by name change to MDC 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 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 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. 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.

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

"Limited Use Areas" shall mean the front stoop, driveway, front walk connecting the stoop with the driveway, deck and patio appurtenant to each Unit and constructed as part of the original construction of each Unit.

"Member" shall mean a Person subject to membership in the Association pursuant to the Article entitled "The Association".

"Mortgage" shall mean a deed or other document by means of which title to any Unit is conveyed or encumbered to secure a debt. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

"Owner" shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Unit; 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.

BK011848PG02043

"Plats" shall mean all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the Register of Deeds' plat book records, and shall also include any Plats, or amendments thereto recorded for the purpose of subjecting any of the Additional Property to this Declaration.

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

"Register of Deeds" shall mean the Register of Deeds for the County where the property is located.

"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.

"Unit" shall mean each portion of the Property that may be independently owned and conveyed and which is intended for development, use and occupancy as a residence for a single family, as shown and indicated as a "Unit" or a "Unit" on any of the Plats which are hereafter recorded.

"Unimproved Unit" shall mean any Unit that is not an Improved Unit.

ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

Section 1. Units Hereby Subjected to this Declaration. Declarant, for itself and its successors and assigns, does hereby submit the Property and the Units to this Declaration. 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 Units shall be a permanent charge thereon, and shall run with the Units.

Section 2. All Units Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Unit, agrees to all of the terms and provisions of this Declaration. Each of the Units is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. Declarant may, at any time, and from time to time, prior to ten (10) 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. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Unit.

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

BK011848PG02044

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 Declarant to subject Additional Property to this Declaration.

Section 4. Withdrawal of Property. 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 and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed necessary in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant. If the property is part of the Common Areas, the Association shall consent to such withdrawal.

Section 5. Submission to a Master Community and Other Acts of Declarant. The Property has been subjected to the Weston Declaration of Master Protective Covenants recorded in Book 3693, Page 456, Wake County Registry (the "Master Declaration"). Declarant reserves the right to amend this Declaration during the Development Period to consolidate the Association with other homeowners' or community associations.

Section 6. Unit Boundaries. In the event that the side boundary of a Unit abuts the side boundary of another Unit, the side boundary shall be a line consistent with and along the center of the firewall(s) separating such Unit from the abutting Unit. In the event that the side boundary of a Unit does not abut the side boundary of another Unit, the side boundary shall be a line consistent with and along the outer exterior surface of the outside wall of such Unit. In the event of any discrepancy between the boundaries of a Unit, as described herein, and the boundaries of such Unit when shown on the recorded Plats, the description of the boundaries of the Unit set forth herein shall control. All of the area within the boundaries of each of the Unit, as herein described, and as shown and depicted on the recorded Plats, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

ARTICLE III. ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. Declarant shall have the right to transfer and convey to the Association, or to cause the transfer and conveyance to the Association, any portion of the Property. All portions of the Property which are so transferred and conveyed to the Association shall thereafter constitute Common Areas. Said right may be exercised by Declarant any time, and from time to time, prior to ten (10) years from the date hereof. Common Areas shall be conveyed to the Association 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 every Unit shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas (other than the Limited Use Areas, which are reserved for the use of the Owner of the Unit to which they are appended) and such right and easement shall be appurtenant to, and shall pass with, the title to the Unit(s) owned by such Owner. The right and easement of enjoyment and use of the Common Areas is 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(s) of any Unit during any period in which any assessment which is due to the Association from such Owner remains unpaid, and for such period as the Board of Directors may consider appropriate for any infraction of its rules and regulations. No such suspension, however, shall prohibit the Owner of any Unit from using the Common Areas to the extent necessary for such Owner to have access to and from his Unit.

BK011848PG02045

The Board of Directors may permit other persons who are not residents of any Units 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. 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 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board acting on the written direction of the Owners of at least 67% of the Units and, if during the Development Period, the written consent of Declarant, the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent feasible unless, within sixty (60) days after such taking, the Owners of at least 67% of the Units (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately 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 Area, 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 the Owners of at least 67% of the Units, 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 Unit. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy special assessments to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, however, the Association, acting through the Board, may dedicate portions of the Common Areas to any local, state or federal governmental or quasi-governmental entity and 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 Area, all without the approval of the membership.

ARTICLE IV. EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY

Section 1. Easements and Agreements Regarding Association Property. The Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) **Easements Shown on Plats.** The Property shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plats as affecting and burdening the Property.

(b) **Limited Use Areas.** Subject to the maintenance easements provided for in Section 2 below, the Limited Use areas appurtenant to each Unit are reserved for the exclusive use and enjoyment of the Owner and/or occupants of such Unit.

BK011848PG02046

(c) Use of Common Areas. Declarant hereby reserves an easement 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 Units, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any and all persons who 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 Units, irrespective of whether such persons are affiliated with Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Units are Improved Units. Such easements shall and do exist without affecting the obligation of the Owner of any Unit 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.

(d) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, or any amendments thereto, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by 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 desired by Declarant and such authorized Persons, 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; the right to construct and operate business offices, signs, construction trailers, and model residences; and the right to exercise all rights reserved to Declarant in this Declaration.

Section 2. Easements over Units. The Units shall be subject to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

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

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

(c) Encroachments and Overhangs. Each Unit shall have a three (3) foot easement as measured from any point on the common boundary between such Unit and any adjoining Unit, or between such Unit and adjacent Common Areas, for encroachments and overhangs due to the placement or settling of the improvements constructed, reconstructed or altered thereon; unless such encroachment or overhang was due to the willful act of an Owner or the Association.

(d) Maintenance. Each Unit shall be subject to a perpetual easement in favor of the Association and its contractors for such maintenance of the Units by the Association as is provided for in the Article entitled "Maintenance" herein. There is further reserved for the benefit of each Unit a reciprocal appurtenant easement between all adjacent Units, or between a Unit and the adjacent Common Areas, for the purpose of maintaining, repairing or replacing the improvements located on each such Unit. All such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the Owner of the adjacent Unit. Except in emergencies, entry onto a Unit shall occur only after providing the Owner of such Unit not less than forty-eight (48) hours advance notice and shall occur only during reasonable hours. Each Owner and the Association shall cooperate with each other Owner and/or occupant for purposes of exercising these easement rights and these easements shall be exercised only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner or Association exercising these easement rights shall pursue such work promptly and diligently and shall

BK011848PG02047

promptly repair any damage that arises out of such maintenance or repair work to the Unit(s) over which this easement is exercised.

(e) Private Streets. All Units shall be subject to a perpetual easement in favor of the Association and all other Unit Owners for maintenance, management, repair, landscaping, and non-exclusive use and enjoyment of the private streets which are located on the Property, as shown on the Plats, whether said streets and alleys are located on the Common Areas or are located on Units. This easement right includes the right of contractors engaged by the Association to enter upon any and all Units from time to time as may be necessary in order to perform any of the above repair or maintenance work. The Owners of the Units shall not impair access to, or otherwise alter in any way, said streets, or landscaping.

(f) Slope Control. Each Unit 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.

(g) Surface Water Drainage. Each Unit shall be subject to a perpetual easement in favor of the Association and all other Units for the drainage of surface waters over, under or across such Unit, including any runoff or carry over of water from one Unit to another, provided that such cross Unit drainage condition was created by Declarant or by a builder authorized by Declarant.

(h) Utilities. Each Unit shall be subject to a perpetual easement in favor of Declarant, the Association, and authorized builders and subcontractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance, repair and replacement of wires, lines, conduits, pipes, and attachments both above and below ground or attached to any building wall in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities. The easement rights to which the Units shall be subject shall include the right of contractors engaged by the Association to enter upon said Units from time to time as necessary in order to perform repair and maintenance work.

(i) Easements for Detention Pond and Flood Plain Maintenance. There shall be a perpetual nonexclusive easement in favor of the Association, its agents and assigns, to enter upon any Unit or any other portion of the Property if and to the extent necessary for the Association, its officers, agents, employees, and independent contractors, to perform and satisfy all duties and obligations of the Association with respect to the maintenance of any structure related to the Property.

ARTICLE V. 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, the 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 Unit.

Section 3. 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

BK011848PG02048

period of such suspension and shall not affect the permanent charge and lien on the Member's Unit in favor of the Association.

Section 4. 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 5. 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, or the Owners of Lots, 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 appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any owner of any Unit 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 6. 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 VI. ASSESSMENTS

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

All sums lawfully assessed by the Association against any Unit 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 Unit and constitute a continuing lien in favor of the Association on such Unit prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Unit; (2) The lien of any first priority mortgage covering the Unit 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 Unit, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Unit. 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, fidelity and other 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

BK011848PG02049

fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), 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").

Within 30 days after adoption of any proposed budget, the Board of Directors shall provide to all the Owners a copy of the budget or a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the copy or summary of the budget and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting 67% of all the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The assessments provided for herein shall commence as to a Unit on the date that Declarant transfers the Unit. 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 Units and the numerator will be the number of Units 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 Unit, to the Owner of every Unit, 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 Unit 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 therefor, 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 Units 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 Improved Unit 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 the Common Areas, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the act(s) of individual Owner(s) and not the result of ordinary wear and tear, (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, or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Units or which significantly disproportionately benefit all Units (which expenses may be specially assessed equitably among all of the Units which are benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. 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.

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

BK011848PG02050

date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title of an Improved Unit and each resale thereof, there shall be levied against such Improved Unit and paid to the Association a special assessment against such Improved Unit as set from time to time by Declarant or the Board of Directors of the Association. Such amount shall not be less than 1/6 of the Annual Assessment or greater than the total amount of the Annual Assessment which shall have been levied against Improved Units 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 improvements. Declarant or Board shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Unit, 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, special, or specific assessment, or any installment of any such assessments 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 Unit owned by the delinquent Member, which lien shall bind such Unit or Units 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 ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Unit or Units 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 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.

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 VII. ARCHITECTURAL CONTROL

BK011848PG02051

Section 1. Architectural Restrictions. No Exterior Structure or Improvement, as defined herein, shall be placed, constructed, erected, installed or made on any Unit unless such building meets all square footage and other requirements that may be set forth in the Plats and is in strict compliance with the provisions of this article.

Section 2. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association 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 and 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 and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. ACC shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property in order to provide guidance to Owners and builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at 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 of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Director's discretion.

Section 3. Exterior Structure or Improvement. The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Unit [including but not limited to (i) a building, fence, wall, patio, playhouse, playground equipment, swimming pool, spa or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, fountains and similar items, or (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Unit]. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Unit until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved 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 Units, and as to location in relation to surrounding structures and topography.

Section 4. Approval Procedures. The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Unit, 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. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within sixty (60) days after submission, in the case of the initial construction of a residence on an Unimproved Lot, or within thirty (30) days, in the case of any requested modification, addition or alteration on an Improved Lot, of all information and materials reasonably requested, the application shall be deemed approved.

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 that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

BK011848PG02052

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. 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 7. Variance. The ACC, in its sole discretion, may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither Declarant, the Association, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, the Association, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board, or the representatives of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming work. 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. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Unit 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 ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a specific assessment pursuant to this Declaration.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

Section 10. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing

BK011848PG02053

contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by Declarant upon any Unit while such Unit is owned by Declarant. Any construction, alteration, addition or removal performed by Declarant upon any Unit while such Unit is owned by Declarant shall be exempt from the provisions of this Article.

ARTICLE VIII. RESTRICTIONS

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

Section 1. Residential Use. All of the Units, attached or detached, 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 Unit shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (a) Declarant or a builder authorized by Declarant from conducting such sales, leasing and promotional activities on any Unit as Declarant shall determine; or (b) the Owner of any Unit from using a portion of a building located on such Unit as an office, provided that such use does not create regular customer, client or employee traffic to and from such Unit and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Unit. No owner may rent a Unit without the prior written consent of the Board of Directors and in no event may greater than twenty percent (20%) of the Units in any neighborhood be rented.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Unit. Each Owner of any Unit, 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 Unit. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, equipment or other goods or chattels on any portion of a Unit which is visible from outside of the Unit, or on any Limited Use Areas, is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Unit. 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 Unit, or any portion thereof.

Section 3. Animals. No Owner may keep any pets on any portion of the Property other than dogs, cats and other customary household pets. No Owner or occupant may keep, breed or maintain any pet for any commercial purpose. No Owner or occupant may keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Unit. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. 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 have removed by the local authorities, without notice to the animal's owner, any animal that presents an immediate danger to the health, safety or property of any person.

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 4. Antennae; Aerials; Satellite Dishes. No transmission antenna of any kind may be erected anywhere on a Unit without the prior written consent of the ACC. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Unit. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended

BK011848PG02054

from time to time. 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 5. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Property; (5) seasonal decorative lights; or (6) front house illumination of model homes.

Section 6. Mailboxes. No change or addition, other than by the Board of Directors shall be made to the design, materials or location of the original mailboxes installed by Declarant for the benefit of the Units.

Section 7. Signs. No sign of any kind or character shall be erected on any portion of any Unit, or displayed to the public on any portion of any Unit, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Unit 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 Unit 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. No person shall burn rubbish, garbage or any other form of solid waste on any Unit or on Common Areas or within the right of way of any street within the Property.

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 driveway, a designated parking space or within a garage. With the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Unit or the Property, no person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

All Owner and occupant vehicles must be kept and stored when not in use within the Unit's garage space or driveway. Garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed two consecutive hours for homeowner related maintenance activities. No conversion of garage space to living space shall be permitted.

The Association may promulgate and enforce additional rules and restrictions regarding vehicles and parking privileges on the Units and Common Areas.

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

Section 11. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Unit shall be white or off-white in color. No bed sheets, newspaper, tin foil, or similar materials may be used as

BK011848PG02055

window treatments.

Section 12. No Subdivision of Units or Timesharing. No Unit may be further subdivided into any smaller Unit. No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 13. No Combination of Units. Contiguous Units may not be combined together without prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Unit for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Unit shall be thereafter liable shall be equal to the total assessments for which all of the Units which were so combined would have been liable had such combination not taken place.

Section 14. Decks, Patio Areas, Stoops, Driveways and Sheds. Grills, patio furniture, potted plants and other items may be permitted on decks and patio areas, subject to local ordinances and any rules promulgated by the Association with respect thereto. Any items placed on front 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 15. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the 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 new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

ARTICLE IX. MAINTENANCE OF UNITS

Section 1. Association's Maintenance Responsibility. Except as may be specifically provided otherwise below, the Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property, including any electrical and irrigation systems; (b) all streets and sidewalks within the Property; (c) any perimeter fencing, landscaping, irrigation systems and improvements in the Common Areas; (d) storm water detention or drainage facilities serving the Property; (e) all exterior portions of the Units, including but not limited to exterior materials, shutters, painting, exterior lighting and roofs and (f) termite and wood-infestation treatment and bond on the Units. In the event that the Association determines that any maintenance 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 and all costs thereof may be assessed to the Owner as a specific assessment. The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

BK011848PG02056

The Association shall further repair and replace the Limited Use Areas appurtenant to a Unit. However, the general maintenance of the Limited Use Area shall be the obligation of the Owner, as further defined in Section 2 below.

Section 2. Owner's Maintenance Responsibility. All maintenance and repair of each Unit not undertaken by the Association shall be the sole responsibility of the Owner thereof, who shall maintain such Unit and its appurtenances in a manner consistent with this Declaration and the Community Wide Standards. Such maintenance obligation shall include, without limitation, the following: prompt removal of litter and waste; keeping improvements and Limited Use Areas in neat and clean condition, and compliance with all governmental health and police requirements.

In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly such Owner's obligations hereunder, the Board of Directors shall have the right, exercisable by it or through its agents or employees, and after giving to the Owner of such Unit at least fourteen (14) days' notice and an opportunity to correct the unsatisfactory condition (except in the event of an emergency situation, which shall be solely determined by the Board, in which case no notice and opportunity to correct shall be required), to enter upon such Unit or appurtenance and correct the unsatisfactory condition. The Owner of the Unit with respect to 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 of Directors shall determine.

Section 3. Damage or Destruction. In the event of the occurrence of any damage or destruction by fire or other casualty to the improvements on a Unit, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Unit prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Unit and the Board of Directors. The Owner of such damaged or destroyed Improved Unit shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Unit is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

Section 4. Party Walls. Each wall built as part of the original construction of the Units, which serves and separates any two adjoining Units, and each fence built as part of the original construction of the Units, which serves and separates any two adjoining patio areas, shall constitute a party wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall may restore it, and the other Owner who is benefited by the wall shall contribute one-half of the cost of restoration, without prejudice, however, the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

ARTICLE X. INSURANCE

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for all insurable improvements located on the Common Areas. 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 (\$1,000,000.00) Dollars applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the

BK011848PG02057

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 2. Insurance on Units. To the extent available at reasonable cost, the Association shall maintain as an Association expense insurance commonly known as "master condominium/townhome insurance", which insurance may cover the following property, regardless of ownership: the roofs, exterior shells of the buildings, fixtures, improvements and alterations that are part of the buildings, and the stoops, decks, driveways and patio areas. The Association's insurance policy may exclude improvements and betterments made by an Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the finished home (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet, and any floor covering).

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board of Directors, all officers, agents and employees of the Association, the Owners, and their respective Mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his or her own expense.

Section 3. Individual Insurance. Each Owner, by virtue of taking title to a Unit subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Units except as set forth in Section 2 above. Each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on such portions of the home that are not covered by the insurance referred to in Section 2 above, as well as a liability policy covering damage or injury occurring on a Unit. 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 of a covered item in the event of damage or destruction from any such hazard.

The Board has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

Section 4. Additional Insurance Requirements.

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

(a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;

BK011848PG02058

- (b) an agreed value endorsement and an inflation guard endorsement;
- (c) any "other insurance" clause contained in the master townhome policy shall expressly exclude individual Owners' policies from its operation;
- (d) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
- (e) the master townhome policy may not be canceled, substantially modified, or subjected to non-renewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units.

All policies of insurance shall be written with a company licensed to do business in the State of North Carolina. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

BK011848PG02059

ARTICLE XI. 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 Unit 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 Property or which affects any Unit 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 Unit subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; (c) any default in the performance by the Owner of such encumbered Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (d) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible 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 Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

Section 4. 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 XII. AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Units, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Units, (d) an amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Units. However, any such amendment shall not adversely affect the title to any Owner's Unit unless such Unit Owner shall consent thereto in writing,

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Unit Owners.

Any 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. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

BK011848PG02060

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

ARTICLE XIII. 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 Unit, then the Owner of any other Unit 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 of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Units.

Section 4. Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Unit owned by such member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of North Carolina. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Judicial Proceedings. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Units, to enforce any liens created by this Declaration. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Unit Owners. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including the foreclosure of

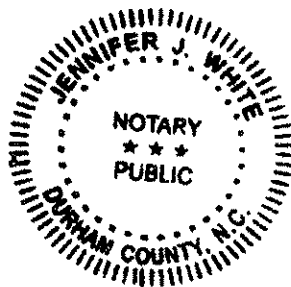
BK011848PG02061

liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of Declarant by operation of law or through purchase of Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.



MCCAR HOMES—RALEIGH, LLC, a
North Carolina limited liability company

By: **McCAR HOMES, INC.,**
a Georgia corporation, its Manager

By: [Signature]
Name: Steven Check
Its: President

STATE OF NORTH CAROLINA
COUNTY OF Durham

This 23rd day of Feb, 2006, personally came before me,
Jennifer J. White, Notary Public for Durham County, North Carolina,
Steven Check, who, being by me duly sworn, says that he is President of McCar
Homes, Inc., a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate
seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by
its authority duly given. And the said President acknowledged the said writing to be the act
and deed of said corporation.

Witness my hand and official seal, this the 23rd day of Feb., 2006.

(Official Seal)

Jennifer J. White
Notary Public

My commission expires: 4/13/08

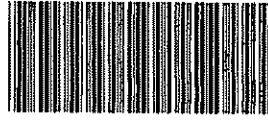
BK011848PG02062

EXHIBIT "A"

Legal Description

BEGINNING at a point on the eastern right-of-way of Sheldon Drive as recorded in Map Book 1989, Page 1482, said point being South 23 deg. 57' 19" East, 780.12 feet from Weston Control Monument #134, said monument having North Carolina Grid Coordinates N = 752106.0123, E = 2055803.6284 NAD 1983, commencing at described point of beginning thence North 69 deg. 54' 39" East, 162.24 feet to an iron pipe, thence North 51 deg. 50' 03" East, 56.36 feet to an iron pipe, thence North 78 deg. 30' 08" East, 372.56 feet to an iron pipe. Thence South 85 deg. 38' 37" East, 158.89 feet to an iron pipe, thence North 68 deg. 53' 20" East, 155.15 feet to an iron pipe, thence North 62 deg. 36' 40" East, 313.07 feet to an iron pipe, thence North 66 deg. 08' 49" East, 163.89 feet to an iron pipe, thence South 43 deg. 22' 27" East, 352.11 feet to an iron pipe, thence South 65 deg. 37' 16" East, 108.37 feet to an iron pipe, thence South 05 deg. 29' 41" East, 293.02 feet to an iron pipe on the northern right-of-way of Cary Parkway, thence following the northern right-of-way of Cary Parkway following a curve to the left having a radius of 2153.00 feet, an arc length of 411.67 feet, a long chord of 411.05 feet with a chord bearing of South 58 deg. 18' 40" West, to an iron pipe, thence South 52 deg. 50' 00" West, 704.61 feet to a point, thence North 84 deg. 34' 04" West, 89.34 feet to a point on the eastern right-of-way of Sheldon Drive, thence following the Eastern right-of-way of Sheldon Drive North 41 deg. 58' 09" West, 791.37 feet to a point, thence following a curve to the right having a radius of 680.20 feet, an arc length of 256.50 feet, a long chord of 254.99 feet with a chord bearing of North 31 deg. 09' 58" West, to the point and place of beginning, containing 25.672 acres more or less, as shown on plat of survey dated March 26, 1996, prepared by Jimmy E. Bass, Registered Land Surveyor, of Withers & Ravenel Engineering and Surveying, Inc.

BK011848PG02063



BOOK:011848 PAGE:02038 - 02063

**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages

22.004-1/20/06