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FOR
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR WHITEHURST SUBDIVISION

THIS DECLARATION made this 10TH day of DECEMBER, 1997, by A. B. Perry Construction, Inc., owner, developer and declarant ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Wake County, North Carolina, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant will convey certain Lots which are part of the said Property subject to certain protective covenants, conditions, restrictions, reservations and charges as hereinafter set forth;

WHEREAS, Declarant desires to create a subdivision, and contemplates developing the project in phases with single family detached dwellings; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of Whitehurst Subdivision, for the maintenance of Common Properties and improvements thereon as described herein, and accordingly desires to subject the Property, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens, as hereinafter set forth, (the "Declaration" as herein defined) each and all of which is hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of Whitehurst Subdivision to create an agency to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Common Properties as defined herein, administering and enforcing the covenants and restrictions governing said Common Properties, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents; and

WHEREAS, Declarant has caused or will later cause to be incorporated under the laws of the State of North Carolina as a nonprofit corporation, Whitehurst Homeowners Association, Inc. for the purpose of exercising the functions described above, and which are hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the premises and covenants set forth herein, Declarant declares that the Property, and such additions and/or deletions thereto as may hereafter be made, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens hereinafter set forth in this Declaration (sometimes referred to as the "Covenants"), and said Covenants shall run with the land and be binding on all persons claiming under and through Declarant, and said covenants shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to the Whitehurst Homeowners Association, Inc., a North Carolina nonprofit corporation, and its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of a fee simple title to any dwelling unit or site which is part of the Property, including contract sellers, but notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, as successors or assigns, until and unless such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner.

Section 3. "Whitehurst Subdivision" or "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and incorporated herein by reference and such additions and/or deletions thereto as may hereafter be brought within or taken from the jurisdiction of the Association as subjected to this Declaration or any Supplemental Declaration.

Section 4. "Common Properties" shall mean and refer to those areas of land within Whitehurst Subdivision which are deeded to the Association for the common use and enjoyment of all members and designated in said deed as "Common Properties," and shall include all private streets, if any, all water located outside public right-of-ways, public utility easements and dwelling units or sites, and all sewer lines located outside public right-of-ways, public sanitary sewer easements and dwelling units or sites. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Properties". All "Common Properties" are to be devoted to and intended for the common use and enjoyment of the Owners, subject to the fee schedules and operating rules adopted by the Association.

Section 5. "Common Expenses" shall mean and refer to all sums lawfully assessed by the Association against its Members, expenses of administration, maintenance, repair or replacement of Common Area and/or landscaped rights-of-way, expenses declared to be or described as common expenses by the provisions of this Declaration, premiums for hazard, liability or other insurance as may be obtained by the Association and expenses agreed by the Members of the Association to be common expenses of such Association.

Section 6. "Site" shall mean any plot of land regardless of size as shown on a recorded subdivision plat of Whitehurst which has been approved by the Declarant as required by this Declaration.

Section 7. "Undeveloped Site" shall mean a site or an area of Whitehurst Subdivision not yet developed but intended to contain one residential unit as provided in the subdivision plan for Whitehurst Subdivision as approved by the Town of Fuquay-Varina, including any additions or deletions thereto.

Section 8. "Lot" shall mean and refer to any improved or unimproved parcel of land, with delineated boundary lines, shown upon any recorded subdivision map of the Property, intended for the construction of a detached single family dwelling, excluding any Common Properties as defined herein.

Section 9. "Landscaped Rights-of-Way" shall mean the medians, if any, and other areas within street rights-of-way within the Property that may be landscaped and improved with sprinkler systems, lighting, and maintained in accordance with the provisions hereinafter contained.

Section 10. "Dwelling Unit" or "Unit" shall mean a residence containing sleeping facilities for one or more persons and a kitchen.

Section 11. "Member" shall mean and refer to every person or entity entitled to membership in the Association as provided in this Declaration.

Section 12. "Declarant" shall mean and refer to A. B. Perry Construction, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development or if such successors or assigns should acquire more than one lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure ("successors" includes any lender with respect to loans obtained by Declarant to develop the Properties.)

Section 13. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Whitehurst Subdivision, as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

Section 14. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 15. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors.

Section 16. "Bylaws" shall mean the bylaws of the Association as they now or hereafter may exist.

Section 17. "VA" shall mean Veterans Administration, "FHA" shall mean Federal Housing Authority, and "HUD" shall mean Department of Housing and Urban Development.

Section 18. "Project" shall mean and refer to the development now known as Whitehurst. Declarant has retained, and hereby retains the right to change the name of the Project from "Whitehurst" to another name selected by Declarant by filing an amendment hereto in the records of Wake County, North Carolina.

ARTICLE II.

PROPERTY AND PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Annexation/Removal of Property. If Declarant is the owner from time to time of any property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record a Supplemental Declaration (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant and the Association, acting through its Board, give written consent thereto and if such consents are given, such property shall be considered "Additional Property". If Declarant, in the development process, deems it appropriate for the benefit of the Association to remove subsequent phases from the Association, the Declarant has such right under this Declaration.

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration

may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property.

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of owners of Additional Property, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Members' Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulations of the Association, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall run with the title of every lot, subject to the following restrictions set forth in Section 9 hereof.

Section 6. Delegation of Use. Any Member may delegate in accordance with the By-Laws of the Association, his right of enjoyment to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on such Members' Lot.

Section 7. Title to Common Properties. Declarant hereby covenants, for itself, its successors and assigns that it shall convey Common Properties to the Association on or before the date that Declarant has acquired effective contracts for the sale of all the Lots as shown on the recorded maps of the Properties.

Section 8. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties subject to the provisions of Article XI, Section 5 of this Declaration;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any Member or any tenant of any Member for any period during which any assessment remains unpaid; and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment; and

(d) The right of the Association to charge Members' guests reasonable admission and other fees for the use of the Common Properties and/or facilities, if any, therein; and

(e) The right of the Association to give, sell or lease all or any part of the Common Properties to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift, sale or lease shall be effective unless authorized by the vote of two-thirds (2/3) of the vote of each class of Members at a duly called meeting and unless written notice of the proposed action is sent to every Member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association or the managing agent and such certificate shall be annexed to any instrument affecting the Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

Section 9. FHA, VA, FNMA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association: Annexation of Additional Properties, mergers or consolidations, mortgaging of Common Properties, dedication of Common Properties, and dissolution and amendment of this Declaration.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Members. Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any dwelling unit or site that is subject by the Covenants to assessments by the Association shall be a Member of the Association; provided, however, that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any dwelling unit or site that is subject to assessment by the Association. Ownership of a dwelling unit or site shall be the sole qualification for Membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a dwelling unit or site in Whitehurst Subdivision. No owner shall have more than one Membership, except as expressly provided hereinafter.

Section 2. Member Classes and Voting Rights. The Association shall have two (2) classes of voting Members:

Class A. Class A Members shall be all Owners with the exception of the Declarant, until its Class B Membership has converted to Class A Membership. Class A Members shall be entitled to one (1) vote for each dwelling unit or site in which they hold the required ownership interest.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each dwelling unit or site in which it holds the required ownership interest, provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(a) The total votes outstanding in Class A Membership equals the total votes outstanding in the Class B Membership; provided, that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, as provided hereunder, and before the time stated in subparagraph (b) below, additional lands are annexed to the Properties without the assent of the Class A Members on account of the development of such Additional Property by the Declarant, all within the times and as provided for herein, or

(b) December 31, 2005. Thereafter, the Declarant may be entitled to one (1) vote per dwelling unit or site owned by it.

Section 3. Voting Right Suspension. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and for any period during which any assessment of a member remains unpaid according to the provisions of Article IV, Section 9.

Section 4. Voting. The total vote of the Association shall consist of the sum of the votes of the Class A Members and the votes of Class B Members present in person or by proxy at a legally constituted meeting at which a quorum is present. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the By-Laws, as amended from time to time. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the By-Laws, as the same may be amended from time to time.

When more than one person holds an interest in any dwelling unit or site, all such persons shall be Members; and the vote for such dwelling unit or site shall be exercised as they among themselves determine; however, in no event may more than one vote be cast with respect to any one dwelling unit or site owned by Class A members and in no event shall fractional votes be allowed.

When one or more co-owners signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more other co-owners is present and objects to such a vote or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted.

A person's or entity's membership in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

Section 5. Right of Declarant to Representation on Board of Directors of the Association. Notwithstanding anything contained herein to the contrary, until December 31, 2005, or until Declarant shall have conveyed seventy-five percent (75%) of the Properties, whichever occurs first, Declarant (or its expressed assignee of the right granted in this section) shall have the right to designate and select at least a two-thirds majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed. Any director designated and selected by Declarant need not be an owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary interest or other interest.

ARTICLE IV.

COVENANTS FOR ASSESSMENT

Section 1. Creation of Lien and Obligation for Assessments. Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to all the terms and provisions of these Covenants and to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

(a) Annual Assessments or charges;

(b) Special Assessments for the purposes set forth in this Article, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The Annual and Special Assessments together, with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection therefor as hereinafter provided, shall also be the personal obligation of the person

who was the Owner of such Lot at the time when the assessment fell due. In the case of co-ownership of a Lot, all such co-owners shall be jointly and severally liable for the assessment.

(c) Special Individual Assessments may be caused by fines for violations and non-compliance. The Board may impose fines against any Lot and such fines shall be treated as a Special Individual Assessment otherwise due to the Association, and as such will be a lien against the Owner's Residential Unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owners(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner. Fines shall be as follows:

(a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).

(b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(c) Third and subsequent non-compliance, or violation or violations that are of a continuing nature: a fine not in excess of Twenty-Five Dollars (\$25.00) per day for each day of continued violation or non-compliance.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration, carrying out the duties of the Board, the purposes of the Association and promoting the recreation, health, safety and welfare of the residents of the Property and for the improvement, maintenance, and operation of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the costs of labor, equipment, materials, and management supervision thereof. The Special Assessments shall be used for the purposes set forth in Section 1c, Section 4 and Section 5 of this Article.

Section 3. Basic and Maximum Annual Assessments. For the calendar year 1997, the maximum annual assessment shall be One Hundred Fifty Dollars (\$150.00) per Dwelling Unit or recorded Lot for which a building permit has been issued, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors. On or before December 31 of each year during the term hereof, the Board shall set the amount of the annual assessment for the ensuing year for each dwelling unit or lot, taking into consideration, among other things, the then current development and/or maintenance costs, estimated increases in development and/or maintenance costs, and the future needs of the Association. The amount of the annual assessment for each dwelling unit or Lot as set by the Board shall be determined by dividing the amount of costs and expenses to be incurred by the Association for the year in question, as such amount is reasonably estimated by the Board (and which estimated amount may include a reasonable contingency fund), by the number of dwelling units or Lots in the Property, such that the regular annual assessment for each dwelling unit or Lot shall be the same. The Annual Assessment shall be due and payable as provided in Section 7 of this Article. Notwithstanding anything herein to the contrary, the Board of Directors can increase the amount

* 12.50/mo.

of the Annual Assessment by up to 20% in any given calendar year without the vote of at least 2/3 of the Members present at a duly called meeting whereat a quorum is present.

Section 4. Special Assessment. In addition to the annual assessment authorized by Section 3 hereof, the Board may, without a vote of the membership, levy in any assessment year or years, one (1) special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of an Association owned improvement including the necessary fixtures and personal property related thereto, acquisition of property, cost of construction of capital improvements to the common areas, or for carrying out other purposes and/or duties and obligations of the Association as stated in its Articles of Incorporation or as stated herein. If a special assessment shall exceed Seventy-Five Dollars (\$75.00) per Unit, or is proposed more than one time per calendar year, it shall require the approval of the Members of the Association, to be obtained at a duly convened regular or special meeting at which a quorum exists and which is called at least in part to secure this approval. Approval shall be by an affirmative vote of at least fifty-one percent (51%) of the votes present in person or by proxy. Special Assessments shall be collectible in such manner as the Board of Directors shall determine. Special Assessments shall be assessed pursuant to this Section 4 against the dwelling units and owners thereof and the Lots and owners thereof on a pro rata basis in the same manner as described in Section 3 above.

Section 5. Emergency Special Assessments. The Association may levy an emergency special Assessment when, in the sole determination of the Board of Directors, there is potential danger of damage to persons or property. Such emergency special Assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, improvements, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to, hurricanes, floods, and fires. Emergency special Assessments shall be collectible from Members in such a manner as the Board of Directors shall determine. Such emergency special assessments are separate and apart from the special assessment referred to in Section 4 of this Article IV in there is no restriction to the number of times per annum an emergency special assessment may be levied.

Section 6. Commencement Date of Annual Assessment. The first annual assessment provided for herein shall commence with the first recordation of lot(s) and annual assessments shall continue thereafter from year to year.

Section 7. Due Date of Assessments. Annual assessments shall be due and payable on an annual basis on the first day of January of each year. The first installment of the annual assessment shall become due and payable on the day of recordation of this Declaration and/or the recordation of lot(s) and shall be prorated according to the number of days remaining in the annual period.

Section 8. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all dwelling units and sites within a particular class of membership, except that, notwithstanding anything within this Declaration to the contrary, Declarant and Builders shall be required to pay only Twenty Five (25%) percent of any Annual Assessment

levied against any dwelling unit or site owned by it for which no building permit has been issued by the appropriate governmental authority.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against all Lots for each assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand, and for a reasonable charge, at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid; provided, however, that no Owner shall be entitled to receive more than one (1) certificate for each payment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Nonpayment of Assessment. Any assessment not paid within ten (10) days after the due date shall incur a late charge in the amount of ten dollars (\$10.00) and, if such assessment is not paid within thirty (30) days after the due date, then such assessment and applicable late fee, shall become delinquent and shall, together with interest thereon at the rate of eighteen percent (18%) per annum or the highest rate of interest permitted by law from the due date, and the cost of collection thereof as hereinafter provided, become a charge and continuing lien on the Lot and all improvements thereon. If an assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of collection, including reasonable attorneys' fees and expenses, and interest as provided above. No Owner may waive or escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents or assigns, the right and power to bring all actions against such Owner or Member personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association and shall be for the benefit of all other Owners.

Section 11. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with late fees and interest as provided in Section 8 hereof and the cost of collection, including reasonable attorney's fees, become a continuing lien and charge on the Lot owned by the defaulting Owner and improvements thereon covered by such assessment, as of the assessment due date, which shall bind such Lot and improvements then in the hands of the Owner, and the defaulting Owner's heirs, devisees, personal representatives, successors, and assigns. Except as hereinafter provided, the aforesaid lien shall be superior to all other liens and charges against such Lot and improvements thereon. The Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. To evidence the aforesaid assessment lien,

the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and Improvements thereon covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot and improvements thereon by the Association in like manner as a deed of trust with power of sale on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred. The Association shall have the power to bid on the Owner's Lot and Improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien; however, sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Exempt Property. The following property, individuals, partnerships and corporations subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) Properties conveyed to public utilities for the purpose of granting utility easements;
- (b) All properties exempt from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemptions; and
- (c) All Common Properties as defined herein;
- (d) All properties dedicated to, and accepted by, a local public municipality or authority.

Section 14. Annual Budget. By majority vote of the directors, the Board of Directors shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by these Declarations and any and all Supplementary Declarations will be met.

Section 15. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. The Architectural Control Committee ("ACC") shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the ACC, whereupon the Board shall appoint three (3) or more persons as the members of the ACC. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any real property subject to this Declaration or subject to annexation to this Declaration.

Except for the initial dwelling structures constructed on Lots by the Builder(s) in accordance with the Declarant's general plan of development, which initial dwelling structures shall be exempt from the following approval process, so long as the plans and specification therefor are in strict conformity with those previously approved by the Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as the case may be, no building, sign, fence, outside lighting, hedge, wall, walk, antenna, clothesline or other structure or planting shall be constructed, erected or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to the topography and finished ground elevation shall have been submitted to and approved in writing by the ACC. The ACC shall have the right to refuse to approve any plans and specifications, which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the ACC shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form within thirty (30) days after the monthly application cutoff date, such plans and specifications shall be deemed approved.

There is specifically reserved unto the ACC, the right of entry and inspection upon any Lot for the purpose of determination by the ACC whether there exists any construction of any improvement which violates the terms of any approval by the ACC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The ACC and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by imposing fines through special individual assessments, any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith.

The Association, Declarant, ACC or any officer, employee, agent, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval

by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ACC to recover any such damages.

Section 2. If, in the event information submitted to the ACC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

Section 3. Unless specifically excepted by the ACC, all improvements for which approval of the ACC is required under this Declaration shall be completed within a reasonable time from the date of commencement of said improvements, and such time shall not be in excess of six (6) months from the date of commencement.

Section 4. Separate and apart from any owner's requirement to meet town and county setback requirements, the ACC shall in all cases have the right to determine and designate additional building set back lines necessary to conform to the general plan of Whitehurst, in order to preserve the integrity of the Properties and the Subdivision Plan. In this respect the ACC's judgement and determination shall be final and binding.

Section 5. A majority of the ACC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ACC, the Board of Directors shall designate a successor.

Section 6. The ACC may adopt additional guidelines along with rules and regulations as it deems necessary to carry out its functions and purposes hereunder, provided all such rules and regulations are not in conflict with this Declaration, shall be approved by the Board of Directors and made a part of this Association's Book of Resolutions.

Section 7. The Association may impose reasonable fees and charges upon Owners applying for Architectural Control approval to enable it to carry out its functions.

Section 8. In an instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration or any other covenants which the ACC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the ACC reserves the right to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ACC, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Properties.

The ACC has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration. The granting of any waiver for any portion of the Properties may be given or withheld in the ACC's sole discretion and a prior grant of a similar waiver shall not impose upon the ACC the duty to grant new or additional requests for such waivers.

ARTICLE VI

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce by means of fines or penalties, reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Properties.

Section 2. Use of Properties. No Lot shall be used except for residential purposes, except that nothing herein shall preclude the use of any Lot for providing a recreational area for the individual Lot owners as a group, or for use by Declarant or Builder as a temporary sales office. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family.

(a) Outside clothes lines shall not be permitted within the subdivision.

(b) No commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than twenty four inches (24") in width and eighteen inches (18") in height, shall be erected or maintained on any Lot. Such signs as allowed hereunder, being temporary in nature, shall not be subject to any set back requirement. Declarant and/or Declarant's assigns shall be authorized to erect and maintain temporary signs for the sales and construction offices and for marketing of Whitehurst and to erect and maintain decorative fencing at any sales or construction office.

(c) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(d) No exposed above-ground tanks will be permitted for storage of fuel, water or any other substance. Swimming pools will be permitted if previously submitted and approved by the Architectural Control Committee.

(e) Nothing shall be kept and no activity shall be carried on in any dwelling structure on a Lot or on the Common Properties which will increase the rate of insurance for the Common Properties. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the Common Properties which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Properties. All garbage receptacles, containers and enclosures shall be located at the rear or side of the dwelling structure on a Lot out of view from the street such structure faces.

(f) Except with the prior written consent of the ACC no trailer, tent, shack, barn, or other outbuildings shall be erected or placed on any Lot covered by these covenants. No detached garage shall be used for human habitation temporarily or permanently.

(g) No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the ACC. No fence shall be used without prior written approval of the ACC. Chain link fences are prohibited.

(h) No accessory building of any nature whatsoever (including but not limited to detached garage, storage building, dog houses, greenhouses) shall be placed on any Lot without prior written approval of the ACC, with said ACC to have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot.

(i) Each Owner shall keep his building site free of tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his building site as above provided, in the opinion of the ACC, the Board of Directors may have the required work done and the costs thus incurred, plus a twenty percent (20%) service charge, in addition to any fines charged for such violation shall be paid by the Owner.

(j) Satellite dishes will be allowed in accordance with FCC standards. However, the Association, as allowed in the FCC ruling, reserves the right to prohibit the installation of satellite dishes or any camouflaged version thereof for the purpose of receiving satellite transmissions without the prior written approval of the ACC.

(k) Decorative lawn ornaments must be approved in writing by the ACC prior to installation on any Lot.

Section 3. Parking Rights. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of motor vehicles owned by such Owner, and Owners of Lots are requested to park their vehicles in their driveways and garages. Owners of Lots shall not be permitted to park boats, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or area screened from the street and approved by the ACC. In no case shall recreational vehicle parking be allowed in front of or beside a house unless adequately screened from view of the street and adjoining Lots. No inoperative or abandoned vehicle, of any type, shall be parked or stored on any Lot or on the streets in the development.

Section 4. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of any Lot or Common Properties.

Section 5. Required Land Area. No single family residential Lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded

subdivision map of the Property. Any owner of more than one (1) contiguous Lot may apply to the ACC for permission to use such Lots as a site for a Single-Family Residence; and, upon written consent of the ACC, said contiguous Lots shall then be defined as a "Lot" for purposes of this Declaration, except that such Lots shall continue to be treated as separate and distinct Lots for the purposes of voting and Assessments. The Owner of such Lots shall be required to comply with the side yard setback set forth herein, except such requirement will apply to the outside side yard setback of the combined lots.

Section 6. Animals and Pets. No stable, dog run, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes.

Section 7. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each Owner shall keep and maintain his Lot in a neat, orderly and well-kept manner. Home businesses are allowed if such business does not create a nuisance. Any such home business must receive written Board approval prior to such business being established.

Section 8. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation, restriction, or provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association, by and through its Board of Directors or its otherwise duly authorized agents, shall have the authority to obtain and shall obtain, if available at a reasonable price, insurance for all insurable improvements on the Common Properties against loss or damage by fire or other hazards, including extended coverage of vandalism and malicious mischief. This insurance, if available, shall be in an amount sufficient to cover the full replacement cost or repair or reconstruction in the event of damage or destruction from any such hazard. The Association shall also obtain a comprehensive public liability policy covering the Common Properties, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, along with a Fidelity bond for all officers and employees having control over the receipt and disbursement of Association funds and Worker's Compensation to the extent necessary to comply with applicable laws. Premiums for all such insurance contemplated hereunder shall be common expenses of the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction. Any proceeds remaining after such costs of repair or reconstruction to the Common Properties shall be retained by and for the benefit of the Association.

(b) If it is determined that the damage or destruction of Common Properties for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a special assessment, as provided for in Article IV of this Declaration, to cover the deficiency.

ARTICLE VIII

CONDEMNATION

In the event that all or any part of the Common Properties shall be taken (or conveyed in lieu of or under threat of condemnation) the award made for such taking shall be payable to the Association as trustee for Owners, to be disbursed as follows:

(a) If the taking involves the portion of the Common Properties on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Properties to the extent such plans are available in accordance with plans approved by the Board of Directors of the Association.

(b) If the taking does not involve any improvements on the Common Properties or in the event that a decision is made not to repair or restore such improvements, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors may determine.

ARTICLE IX

DECLARANT'S RIGHTS

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Dwelling Units shall continue within Whitehurst, Declarant shall

have the following rights described in the Article, and the following restrictions described in this Article shall remain in effect.

(a) Declarant may maintain and carry on, or may delegate such rights to the Builder, upon portions of the Common Properties such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and information centers, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models or information centers.

(b) No person or entity shall record any Declaration of Covenants, Conditions and restrictions, or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration or similar instrument approved by recorded consent be null and void until signed by the Declarant.

(c) the Board of the Association shall have no authority to, and shall not, undertake any action which shall:

(1) decrease the level of maintenance services of the Association performed by the initial Board as specified in the Articles of Incorporation of the Association;

(2) change the membership of the ACC or diminish its powers as stated herein;

(3) alter or amend any Declaration, any subsequent amendment thereto, the Articles or By-laws of the Association;

(4) modify, amend or alter the Subdivision Plan;

(5) terminate or waive any rights of the Association under this Declaration;

(6) convey, lease, mortgage, alienate or pledge any easements or Common Property of the Association;

(7) terminate or cancel any easements granted hereunder or by the Association;

(8) terminate or impair in any fashion any easements, powers or rights of the Declarant hereunder;

(9) restrict the Declarant's right of use, access and enjoyment of any of the Properties,
or

(10) cause the Association to default on any obligation under any contract or this Declaration, unless the Declarant consents in writing to the prohibited action. The Declarant's

consent shall be exercised by its appointee on the Board or other person designated to so act by the Declarant.

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right of the Declarant beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Wake County, North Carolina.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) December 31, 2005, or (b) the recording by Declarant of a written statement that all sales activity in Whitehurst has ceased and the Declarant's rights have been assigned to the Board of Directors of Whitehurst Homeowners Association.

ARTICLE X

POND RULES AND REGULATIONS

Section 1. Use of Pond. Each Owner's use and enjoyment of the pond located on the Property shall be subject to the following provisions:

(a) no boats shall be allowed or permitted except for a boat used by the Association for maintenance, care and repair of the pond or facilities attendant thereto;

(b) no net fishing shall be allowed or permitted;

(c) no dumping or discharge of any substance into the pond shall be allowed or permitted;

(d) the Association shall not be responsible for supervision of any activities or uses of or on the pond;

(e) at all times when the pond is being utilized for any purpose by a family, guest, invitee or licensee, the Owner shall be responsible for supervising such use;

Section 2. Disclaimer and Standard of Liability. Neither the Association nor Declarant assumes any responsibility for the method, manner or means by which any Owner, the members of his family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner shall use and enjoy the pond. Accordingly, neither the Association nor Declarant shall be liable to any Owner, the members of his family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner, except where physical injury to a natural person is proximately caused by the gross negligence or recklessness of the Association or Declarant, as the case may be. This disclaimer and standard of liability shall be binding on the Association,

Declarant, all Owners, members of their families, guests, invitees, licensees, tenants, contract purchasers and others acting through Owner. If this disclaimer and standard of liability should be held inapplicable to or not binding upon any class or sub-class of persons referenced above by a court of competent jurisdiction, it shall nonetheless survive and remain in full force and effect as to all other classes or sub-classes. Nothing contained in this Section shall be deemed a waiver or modification of any common law or statutory defenses otherwise available to the Association or Declarant including, but not limited to, contributory negligence. Any Owner whose conduct was a concurring or a proximate cause of any injury or damage for which the Association or Declarant is sued shall indemnify and hold the Association and Declarant harmless in the event the claim on behalf of any such person injured or damaged is reduced to judgment or otherwise paid by the Association or Declarant, or both.

Section 3. Other Rules and Regulations. The Association, through its Board of Directors, shall have the right to impose additional regulations for the use and enjoyment of the pond located on the Property.

ARTICLE XI

EASEMENTS

Section 1. Blanket Easement. There is hereby created a blanket easement upon, across, over, and under all of said Property subject to this Declaration for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but no limited to water, sewer, gas, telephones, cablevision and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary equipment on said property, and to affix and maintain electrical and/or telephone equipment under the roofs and exterior walls of said Common Properties. An easement is further granted to all police, fire protection, garbage collectors, ambulance, and all similar persons to enter upon the streets and Common Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management companies selected by the Association to enter in or to cross over the Common Properties provided for herein. Notwithstanding anything to the contrary contained in this Section 1, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable documents, Declarant (or the Association after the termination of Class B Membership or in the event the easement crosses property owned by the Association) will have the right and authority to grant such easement on said property without conflicting with the terms hereof. The easement provided for in this Article shall in no way affect other recorded easements on said Property.

Section 2. Underground Electrical Services.

(a) Underground electrical service shall be available to all the Lots and to any recreational buildings that may be constructed on the Common Properties. The metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have a two-foot priority easement along and centered on the underground electrical power service conductors installed from the utility's company easement to the designated point of service on the dwelling.

(b) Easements for the underground service may be crossed by the driveways and walkways, provided the Declarant or builder makes prior arrangements with the utility company furnishing electrical service. Such easements for the underground service shall be kept clear of all other improvements including buildings, patios and/or other pavings other than crossing walkways or driveways and neither Declarant nor any such utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, and other improvements of the Owner located on land covered by said easements.

(c) An easement is hereby established for the benefit of all applicable government agencies over all Common Properties and over an area five (5) feet behind the curb line of any street or roadway within this property hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage (if available), and drainage facilities, fire fighting, law enforcement, garbage collection and the delivery of mail.

Section 3. Encroachments and Declarant's Easements to Correct Drainage. All Lots and the Common Properties shall be subject to an easement for the encroachments of initial improvements constructed on adjacent sites by the Builder to the extent that such initial improvements actually encroach, including, without limitations, such items as overhanging eaves, gutters, downspouts, bay windows, steps and walls. If this Declaration is breached as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alterations, there is hereby created and shall be and remain a valid easement for such encroachment with the maintenance of the same.

Section 4. Easement to Wake County. An easement is hereby established for municipal, state or public utilities serving the area, their agents and employees on all Common Properties hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

Section 5. If ingress or egress to any Lot is through any part of the Common Properties, any conveyance or encumbrance of the Common Properties shall be subject to such Lot Owner's easement for ingress and egress.

Section 6. Utilities for Common Properties. As consideration for the conveyance of the Common Properties and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and

expenses arising by virtue of the use of water provided to and used in connection with any of the Common Properties and by virtue of the use and operation of the street lights installed and erected within the Common Properties from and after the date of such acceptance. Such costs of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of this Declaration.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and shall be to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded. At such time, the easements, covenants, conditions and restrictions herein may be extended for period(s) of ten (10) additional years each by majority vote of the Owners of the Lots, and the right of the Owners to extend such covenants and restrictions shall exist as long as such a desire is expressed by a majority vote of said Owners. Owners may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting.

Section 2. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration may be amended or modified at any time by a vote of sixty six and two-thirds percent (66 2/3%) of the total eligible votes of the membership of the Association as defined in Article III hereof, with both classes of the membership voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. Notwithstanding anything contained hereinabove, it is understood and agreed that the consent of Declarant in writing to any amendment or modification hereof or of any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 2001. In addition, Declarant may make minor amendments or modifications hereof which do not involve a change which materially affects the rights, duties or obligations specified herein provided it first obtains the approval (by vote at a duly called meeting) of the holders of fifty-one percent (51%) or more of the eligible votes of the Association (with both Classes of voting Members voting together). Any amendment or modification effected pursuant to this Section 2 shall become effective when an instrument is filed for the record in the Deed Records of Wake County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 2001). The foregoing shall not limit the rights of Declarant under Article II, Section 5 above. In addition to the foregoing rights, Declarant may (at Declarant's option) amend and modify this Declaration and any Supplemental Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such

Supplemental Declaration to comply with the requirements of FHA/VA/Fannie Mae or other similar agency.

Section 3. Enforcement. Each Owner is empowered to enforce the Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charges or lien and in no event shall any delay in such enforcement be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 4. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 5. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It is the Owner's responsibility to notify the Association of any changes in Owner's name and/or mailing address.

Section 6. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 7. Exchange of Common Area. Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may convey to Declarant or exchange with the Declarant, as well as any other member, for fair market value, any portion of the Common Properties theretofore conveyed to the Association, as provided in the Articles of Incorporation of the Association. Any such conveyance shall be subject to prior HUD/VA approval. Upon such conveyance, the area conveyed shall cease to be Common Properties and shall cease to be subject to the provisions of this Declaration relating to the Common Properties. Any area purchased by the Association pursuant to the foregoing provision shall become Common Properties and subject to the provisions of this Declaration relating to the Common Properties. (The following hypothetical situation is by way of illustration but not of limitation: Due to a surveying error an undesirable drainage area is designated for the location of dwelling units or sites. Under this provision, Declarant and Association exchanged deeds so that the dwelling units or sites may be relocated within the Common Properties and the area previously designated for dwelling units or sites is converted to Common Properties.)

Section 8. Conflicts. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of this Declaration shall control.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed under seal on the day and year first above written.

A. Bryan Perry Sr. (Seal)
A. Bryan Perry, Sr., President
A.B. Perry Construction, Inc.

THE STATE OF NORTH CAROLINA

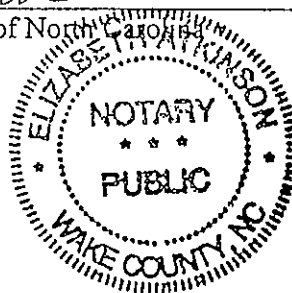
COUNTY OF WAKE

BEFORE ME, the undersigned authority, on this day personally appeared A. Bryan Perry, Sr., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as his personal act and deed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of December, 1997.

Elizabeth Atkinson
Notary Public in and for the State of North Carolina

My commission expires: 4-7-02



Received pursuant to Section
of the Unified Development Ordinance
of the County of Wake

By: _____

Title: _____

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Elizabeth Atkinson

Notar(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

EXHIBIT A

BEING all that property as shown on a plat entitled "Lots 1-37, Whitehurst, Phase I" recorded in Book of Maps 1997, Page 1116 and 1117 and that recombination plat of Lots 7-10 recorded in Book of Maps 1997, Page 1263, Wake County Registry.