

WAKE COUNTY, NC 95
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/03/2005 AT 10:18:57

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Hold: Harold E. Russell, Jr. 4/67

**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
SCOT'S LAUREL SUBDIVISION**

THIS DECLARATION, made on the date hereinafter set forth by Lennar Carolinas, Inc., a Delaware corporation, hereinafter referred to as "Declarant".

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain Properties in Holly Springs Township, County of Wake, State of North Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

WHEREAS, Declarant will convey lots subject to certain protective covenants, conditions, restrictions and easements as hereinafter set forth;

WHEREAS, Declarant has caused or will later cause to be incorporated under the laws of the State of North Carolina, as a non-profit corporation, SCOT'S LAUREL HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth and which shall be duly formed and in good standing prior to the conveyance of any lot.

NOW, THEREFORE, Declarant hereby declares that all of the Properties described on Exhibit A, including without limitation, every Lot (herein after defined) which is a part of the Properties, shall be held, sold, used, occupied, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. It is anticipated that Declarant, by the recording of supplemental declarations will convey all

the property described on Exhibit A subject to these covenants, conditions and restrictions as may be modified.

ARTICLE I

DEFINITIONS

Section 1.01. "Act" is defined as the "North Carolina Planned Community Act", currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

Section 1.02. "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.

Section 1.03. "Architectural Control Committee" shall mean a committee of three (3) individuals appointed by the Declarant or the Board of Directors.

Section 1.04. "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its Owner by the Association in the manner herein provided.

Section 1.05. "Association" shall mean and refer to Scot's Laurel Homeowners Association, Inc., its successors and assigns.

Section 1.06. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.07. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 1.08. "Common Area" shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including Open Space Areas, open space/protective yard, parking areas, and any recreational facilities constructed, erected or installed on the real property that is part of the Common Areas. Any Stormwater Control Measures serving more than one Lot, which are situated outside the public street rights of way, are Common Areas, including any stormwater management area.

Section 1.09. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas, expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; and insurance premiums..

Section 1.10. "Declarant" shall mean and refer to Lennar Carolina, Inc., a Delaware corporation, its successors and assigns as provided in the Planned Community Act and also mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by Lennar Carolinas, Inc. hereinafter when such designee becomes vested with title to two or more undeveloped Lots for the purpose of causing dwellings to be constructed thereon, and any such successor in title to Lennar Carolinas, Inc. shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and un-conveyed), but not longer; provided, however, such designee's classification as a Declarant shall automatically terminate upon such designee becoming in default under its agreement with Lennar Carolinas, Inc. to purchase Lots.

Section 1.11. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Scot's Laurel and all valid amendments hereto applicable to the Properties recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 1.12. "Dwelling Unit" include without limitation, townhomes and each attached dwelling unit located on its own separate lot. A "Detached Dwelling Unit" is defined as a Dwelling Unit located in a building on a Lot which contains only that Dwelling Unit. The Declarant, during the period of Declarant Control Period, and thereafter the Association, has the authority to resolve any and all conflicts, disputes or questions as to whether a Dwelling Unit is a Detached Dwelling Unit or an Attached Dwelling Unit.

Section 1.13. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

Section 1.14. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U. S. Department of Veterans Affairs.

Section 1.15. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties (provided said map has been approved by Declarant or the Association) with the exception of the Common Area and road rights-of-way which are offered for public dedication. Except where otherwise indicated by context, the term "Lot" shall include the improvements on such Lot.

Section 1.16. "Limited Common Expenses" is defined as all of those expenses of the types included with the term Common Expenses that are related solely and specifically to Attached Dwelling Units. The Limited Common Expenses shall be paid for solely by those Members of the Association who own real property located in a particular phase, section, or subdivision of Scot's Laurel or who own the particular Lot

for or which the maintenance has been established. Exterior maintenance of Attached Dwelling Lots and yard maintenance for such Lots are a Limited Common Expense.

Section 1.17. "Map" or "Maps" shall mean and refer to any plat or map of the Properties constituting the initial phase or any additional phases (if they are annexed pursuant to Article IX hereof) which may be recorded by Declarant in the Office of the Register of Deeds in Wake County, North Carolina, hereafter.

Section 1.18. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.19. "Mortgage" means any mortgage, deed of trust and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any obligation.

Section 1.20. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

Section 1.21. "Organizational Documents" shall mean and refer to the Articles of Incorporation and By-Laws of the Association, and all lawful amendments thereto.

Section 1.22. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.23. "Person" means any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 1.24. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to Properties, as such provisions shall be amended and re-codified from time to time.

Section 1.25. "Property" or "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference and such additions thereto as may hereafter be annexed and brought within the jurisdiction of the Association.

Section 1.26. "Stormwater Control Measures" shall mean and refer to the stormwater facilities situated outside the public street rights-of-way and serving more than one Lot and located on the Property as private drainage easements or stormwater management areas designated on recorded Maps of the Property.

Section 1.27. "Subdivision Plan" is defined as the most current development plan approved by the Town of Holly Springs for any portion of the Properties or the Declarant Additional Property, including a subdivision plan, site plan, group housing plan

or cluster unit development plan. When two or more Subdivision Plans are approved for the same portion of the Properties (for example, a phase or section within a cluster unit development), the most current and most specific plan controls.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and a right and easement over the Common Area for access, ingress and egress to and from streets, parking areas, walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Admission and Other Fees: Subject to the ordinances of the Town of Holly Springs, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of any recreational facilities which may constitute a portion of the Common Area;

(b) Suspension of Use of Common Area: The right of the Association to suspend the voting rights and right to use of any of the recreational facilities which may constitute a portion of the Common Area by an Owner, his family, occupants, tenants, guests and invitees for any period during which any Assessment against his Lot remains unpaid. Such rights also may be suspended, after notice and hearings, for and the period of the infraction plus a reasonable period not to exceed sixty (60) days, for any infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;

(c) Borrowing for Improvements: The right of the Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money for the purpose of constructing, repairing or improving the Common Area and its facilities, and in aid thereof, with the assent of Members entitled to cast at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;

(d) Dedication and Transfer of Common Area: Except as restricted by applicable law, including but not limited to the ordinances, regulations and procedures, including variances, of the Town of Holly Springs, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless Members entitled to cast

at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the Town of Holly Springs have been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;

(e) Guests: The right of the Association to limit the number of guests that a Member may allow to use the Common Area;

(f) Use of Common Area: The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and facilities, if any, by the Members and others and to formulate, publish, impose and enforce rules and regulations and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking;

(g) Easements: The right of the Declarant, during the period of Class B membership, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area to any public agency, authority, or any utility for such purposes as benefits the Properties or any portion thereof. This Section 2.01(g) may not be amended or deleted, without the written consent of Declarant;

(h) Exchanges: The right of the Association, as provided by and consistent with the Town of Holly Springs Code, as the same may be amended from time to time, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act; and

(i) Rules and Regulations: The right of the Association or Board to formulate, publish, impose and enforce rules and regulations as provided by this Declaration for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2.02. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the By-Laws, his rights of use and enjoyment in and to the Common Area, to the members of his family, his lawful tenants, or contract purchasers, who reside on such Owner's Lot and, to his guests, invitees and licensees.

Section 2.03. Title to the Common Area. Prior to the sale of any Lot, the Declarant hereby covenants for itself, its successors, and assigns that in accordance with the Planned Community Act it will convey fee simple title to the Common Area shown on the same recorded Subdivision Map to the Association, which Common Area shall include any private roads or drives which may have been previously created, free and

clear of all encumbrances and liens, except utility and drainage easements and those easements stated in Article VIII. Title to Common Area within real property annexed pursuant to this Declaration shall be similarly conveyed to the Association. The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots and the Common Area is restricted against private or public ownership for any reason other than as provided by the Planned Community Act. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Planned Community Act and the ordinances, rules, regulations and procedures, including variances, of the Town of Holly Springs.

Section 2.04. Television Antennas. The Association may provide, but is not required to provide, one or more cable television or telecommunication systems, central television antennas or other telecommunications-receiving devices for the convenience of the Members. The costs of services provided under these contracts may be included in annual or special assessments applicable to the Lots. The Association may regulate or prohibit the erection of antennas, satellite dishes and related equipment on any Lots in accordance Section 7.05 of this Declaration. No exterior antennas, dishes, towers, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained without the prior written consent of the Board of Directors or Architectural Committee.

Section 2.05. Parking Rights. If a Lot is improved with a garage and/or is served by a driveway for which an easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage and the space in front of the garage if it does not interfere with another Owner. Parking shall not be permitted in a shared driveway. Owners of Lots, members of their family, their guests or tenants shall not be permitted to park any vehicles on the streets of the Properties. Garages shall be used for parking of motor vehicles and shall not be used as storage areas nor converted to other uses, such as conversion to living area. The Board may regulate all parking on the Common Areas including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other water craft, trailers, campers, tractors, trucks other than pickup trucks rated at 3/4 tons or less, and motor vehicles other than passenger motor vehicles for 8 or fewer passengers shall be parked within the right of way of any street within the Properties, nor shall any of these be regularly parked on the Properties except in an enclosed garage or in areas on the Properties designated by the Board. No inoperable motor vehicles shall be regularly stored on any Lot or on the streets of the Properties. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Properties.

Section 2.06. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities, and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners' prior to their effective date. Such rules and regulations shall be binding upon the Owner's (with the exception of the Class B Member), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or

modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice and opportunity to be heard, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Common Area. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

Section 2.07. Taxes on Common Area. The Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes, special assessments and assessments for public and private capital improvements made to or for the benefit of the Common Area or levied against the Common Area, if any.

Section 2.08. Leases of Lots. Any lease between an Owner and a tenant for the lease of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall be for a term of not less than 180 days.

Section 2.09. Utility Charges for Water and Street Lights. As consideration for the conveyance of the Common Area 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 Area and by virtue of the use and operation of the street lights installed and erected within the Common Area from and after the date of acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of Article IV below.

Section 2.10. Fences. There shall be no fencing allowed on any Lot.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

3.01. Membership. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof

of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all Persons are entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons, shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

3.02. Membership Classes:

Class A: Class A Members are all Owners of Lots containing or intended for a single family attached dwelling units excluding the Declarant during the Declarant Control Period. Provided, following the end of the Declarant Control Period, the Declarant also is a Class A Member with respect to all Lots and Unsubdivided Land owned by the Declarant. Except as otherwise provided herein, Class A Members are entitled to the following votes:

- (1) A Class A Member is entitled to one (1) vote for each Attached Lot owned by such Class A Member. When the Class C Membership terminates, Declarant shall be entitled to one (1) vote for each Lot owned. Only one (1) vote is entitled to be cast for each Lot, regardless of the number of Owners thereof and fractional voting is prohibited;

Class B: Class B Members are all Owners of Lots containing or intended for a single family detached dwelling units, excluding the Declarant during the Declarant Control Period. Provided, following the end of the Declarant Control Period, the Declarant also is a Class B Member with respect to all Lots and Unsubdivided Land owned by the Declarant. Except as otherwise proved herein, Class B Members are entitled to the following votes.

- (1) A Class B Member is entitled to one (1) vote for each Detached Lot owned by such Class B Member. When the Class C Membership terminates, Declarant shall be entitled to one (1) vote for each Lot owned. Only one (1) vote is entitled to be cast for each Lot, regardless of the number of Owners thereof and fractional voting is prohibited;

Class C: The Class C Member(s) shall be the Declarant, or its assigns, and shall be entitled to three (3) votes for each Lot owned. The foregoing allocation of votes is in recognition of the fact that the Properties likely will be developed in phases and there may be times during the development of the Properties when Declarant owns less, if any, Lots. The Class C membership shall be reinstated if before December 31, 2011 additional lands are annexed to this Declaration as hereinafter provided. The Class C membership shall cease and be converted to Class A or Class B membership on the happening of either of the following events, whichever occurs earlier:

- (a) When 75% of the maximum number of Lots allowed for the Properties (as amended and supplemented from time to time) under the subdivision plan have been conveyed to Owners; or
- (b) on December 31, 2011; or
- (c) the date specified by the Declarant in a written notice to the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessments or charges, and (2) collected as hereinafter provided. All annual assessments shall be fixed at a uniform rate for all Lots; provided, however, as to any Lot which is not a Lot in use (owned by Declarant or its' assigns), the amount of the annual assessment for each such Lot shall be an amount equal to twenty-five percent (25%) of the amount of the annual assessment applicable to a Lot which is a Lot in use. Assessments may be collected on an annual, semi-annual or quarterly basis as determined by the Board from time to time. The annual and special assessments, together with interest thereon, applicable late fees and the costs of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot against which each such assessment is made until paid in full. Each such Assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to pay the Common Expenses and to promote the beautification of the Property, the recreation, health, safety and welfare of the residents of the Property, to enforce these covenants and the rules and regulations of the Association, and in particular for the acquisition, improvement and maintenance of the Common Area, services and facilities devoted to these purposed and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the cost of maintenance as provided in this Declaration and, in particular, for the payment of governmental water and sewage disposal charges attributable to the Common Areas, as well as other like expenses, including but not limited to, operation, maintenance and repair of Stormwater Control Measures and for such other purposes permitted by the

Planned Community Act Chapter 47F of the General Statutes of North Carolina as now stated and as hereafter amended. Assessments shall include, but not be limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Common Area, and easements appurtenant thereto, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of the Property, private streets, drives and parking areas, and the employment of attorneys, accountants and other professionals on behalf of the Association when necessary. The Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Association Common Area out of the assessment levied.

Section 4.03. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Properties or Lots which the Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a common expense, but if the reserve fund is inadequate, a special assessment may be made.

Section 4.04. Maximum Annual Assessment. The following provisions shall not operate so as to restrict the Association or the Board in performing the duties and obligations required of the Association or the Board under the Planned Community Act, but they shall be a limitation on discretionary costs and expenses above and beyond such duties and obligations:

(1) Until January 1, 2006, the maximum amount annual assessment applicable to each assessment category is as follows:

<u>Assessment Category</u>	<u>Maximum Annual Assessment</u>
Class A Lots	1,800.00
Class B Lots	420.00
Class C Lots	_____
Lots containing Attached Dwellings	450.00
Lots containing Detached Dwellings	105.00

(2) From and after January 1, 2006, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership. Any budget increasing assessments by less than twenty percent (20%) is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting.

(3) From and after January 1, 2006, the maximum annual assessment may be increased above twenty percent (20%) of the maximum annual assessment for the previous year by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(4) The Board of Directors may fix the annual Assessment at an amount not in excess of the maximum annual assessment.

(5) Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses as required by the Planned Community Act. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

Section 4.05. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or any other purpose permitted under the Planned Community Act. Any such special assessment shall have the two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Fines levied by the Board of Directors shall be treated as special assessments otherwise due to the Association, and as such, will be a lien against the Owner's Lot if not paid. Such fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines.

Section 4.06. Working Capital Fund. In addition to any other assessment provided in this Declaration, a sum equal to two (2) months of the regular annual assessment applicable to such Lot shall be collected from the purchaser and transferred to the Association at the time of closing of the sale of each Lot to a party other than the Declarant or its' assigns. Each Lot's share of the working capital fund shall be paid to the general operating fund of the Association to be used in the same manner specified for annual assessments. All sums paid into the working capital fund are in addition to and not in lieu of regular assessments for Common Expenses.

Section 4.07. Notice and Quorum for Any Action Authorized Under Sections 4.04 and 4.05. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.04 or 4.05 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the

first such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. This provision shall continue to reduce the quorum by one-half from that required by the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 4.08. Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots and annual assessments shall be due and payable and collected on an annual, semi-annual or quarterly basis or as deemed appropriate by the Board of Directors.

Section 4.09. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to a Lot on the earlier of the date such Lot was conveyed by the Declarant to a third party purchaser or the date such Lot becomes a Lot in use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar quarter or year. The Board of Directors shall adopt a proposed budget for the Association and fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The Board of Directors shall send to each Member a written summary of the proposed budget and a written notice of the annual assessment due subject thereto. If necessary, a written notice of the meeting of Members to consider ratification of the proposed budget must be sent to all Members at least ten (10) days and not more than sixty (60) days in advance of such meeting called for that purpose. Unless otherwise provided in the Planned Community act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such smaller percentage as required by the Planned Community act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new budget is ratified. The due date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 4.10. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment remaining not paid thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of eighteen percent (18%) per

annum, or other such rate as established by the Association as provided in the Planned Community Act, but in no event shall such interest exceed the highest rate allowed by law, and shall also be subject to late fees as approved by the Board of Directors and permitted by law. Sixty (60) days after the delinquency, the Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest thereon, late charges and reasonable attorney fees of any such action, or foreclose the lien against the property in a like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of this Section, the amount of delinquent assessment and late charge shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. Each Owner, by acceptance of a deed to a Lot hereby expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner 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. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 4.11. 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 first deed of trust on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veteran Affairs ("VA") or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage, deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.12. Exempt Property. The following portions of the Properties, subject to this Declaration shall be exempt from the assessment created herein:

1. All portions of the Property dedicated to and accepted by a local public authority; and
2. The Common Area.

Section 4.13. Fines, Designated to be Special Assessments. The Board may impose fines against any Lot and such fines shall be treated as a special assessment

otherwise due to the Association, and as such will be alien against the Owner's dwelling 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 fines paid by the offending Owner(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 One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

Section 4.14. Association Funds Not Asset of Owners. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any common expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Properties

ARTICLE V

INSURANCE

Section 5.01. Ownership of Policies. All insurance policies upon the Common Area, which shall be purchased by the Association, shall be for the benefit of all the Association and the Owners and their mortgagees as their interest may appear.

Section 5.02. Coverage. The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for the Common Area, including but not

limited to the recreational facilities, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in an amount as determined by the Board of Directors, but in any event of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing for waiver or subrogation, if possible. All such insurance coverage shall be written in the name of the Association.

Section 5.03. Fidelity Insurance or Bond. The Association may maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustee and employees of the Association and for all other Persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds or to otherwise deal in the assets of the Association to a management agent, such management agent shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to one-half (1/2) of the total annual assessments on all Lots plus reserve funds accumulate.

Fidelity bonds required herein shall:

- A. name the Association as an obligee;
- B. contain waivers by the issuers of the fidelity bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on

behalf of the Federal National Mortgage Association any loan secured by any Lot.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

Section 5.04. Premiums. Premiums for contracts of insurance and fidelity bond coverages purchased by the Association shall be paid by the Association and charged ratably to all Owners as an assessment according to the provisions of Article IV above.

Section 5.05. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association, as insurance trustee under this Declaration. The sole duty of the Association, as insurance trustee, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 5.06. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association, as insurance trustee, shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- (a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.
- (b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VI

ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

Section 6.01. Purposes. The Properties are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Properties; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Properties; to preserve, so far as practicable, the natural beauty of said Properties; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Properties; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and

quality of improvements in said Properties and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of dwellings may be built by the Declarant or its' assigns to provide a variety of housing options.

Section 6.02. Plan Approval Requirement. Other improvements constructed, installed, planted or otherwise made by the Declarant or its' assigns, no building, sign, fence, outside lighting, hedge, wall, roof, shingle replacement, walk, antenna, deck, porch, carport, garage, or other structure or landscape planting shall be commenced, constructed, erected, altered, permitted or planted on any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a dwelling unit or Lot be made thereto, nor shall any building, wall, fence, or other structure be rebuilt after destruction by any hazard until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to an approved in writing by the Declarant or its' assigns during the period of Class B membership, and thereafter the Architectural Control Committee. The Architectural Control Committee 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 Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure, landscaping and materials or location on which the same are 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 Architectural Control Committee shall fail to specifically approve or disapprove the plans and specification submitted in final and complete form, within thirty (30) days after written request for final approval or disapproval such plans and specifications shall be deemed approved. To the extent not prohibited by the Planned Community act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specification. Nothing herein contained shall be construed to require approval for any improvements, constructed, made, installed or planted by the Declarant, or its' assigns, nor to permit interference with the development of the Properties by the Declarant, or its' assigns, so long as said development follows the general plan of development of the Properties approved by FHA and/or VA, if any, or by the Town of Holly Springs from time to time.

Section 6.03. Architectural Committee. The Board of Directors shall designate the number of and appoint the members of the Architectural Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Committee, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time with or without cause, and without prior notice, by the Board.