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LAURA M. RIDDICK
REGISTER OF DEEDS
WAKE COUNTY

DECLARATION OF PROTECTIVE COVENANTS

FOR

THE VILLAGE AT WESTGATE

112⁰⁰

- TABLE OF CONTENTS -

Article	Section	Page
I.	DEFINITIONS	1
II.	PROPERTY SUBJECT TO THIS DECLARATION	1
	1. Property Hereby Subjected To This Declaration	1
	2. Other Property	1
III.	MEMBERSHIP IN ASSOCIATION AND VOTING RIGHTS	1
	1. Membership	1
	2. Voting	2
IV.	ASSESSMENTS	2
	1. Purpose of Assessment	2
	2. Creation of the Lien and Personal Obligation for Assessments	2
	3. Annual Assessment	3
	4. Computation	3
	5. Special Assessments	3
	6. Effect of Nonpayment of Assessments: Remedies of the Association	3
	7. Date of Commencement of Assessments	4
	8. Specific Assessments	4
	9. Budget Deficits During Declarant Control	5
	10. Notice and Quorum for Any Action Authorized Under Sections 3 and 5	5
V.	MAINTENANCE; CONVEYANCE OF PROPERTY TO ASSOCIATION	5
	1. Association's Responsibility	5
	2. Owner's Responsibility	6
	3. Party Walls and Party Fences	6
	4. Conveyance of Property by Declarant to Association	7
VI.	USE RESTRICTIONS AND RULES	7
	1. General	7
	2. Residential Use	7
	3. Architectural and Landscaping Standards	8
	4. Signs	9
	5. Vehicles/Garages	9
	6. Leasing	10
	7. Occupants Bound	10
	8. Animals and Pets	10
	9. Nuisance	10
	10. Unsightly or Unkempt Conditions	10
	11. Antennas	10
	12. Tree Removal	11
	13. Drainage	11
	14. Sight Distance at Intersections	11
	15. Garbage Cans, Woodpiles, Etc.	11
	16. Subdivision of Lot	11
	17. Guns	11
	18. Fences	12
	19. Utility Lines	12
	20. Air Conditioning Units	12
	21. Lighting	12
	22. Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items	12
	23. Energy Conservation Equipment	12
	24. Swimming Pools	12
	25. Gardens, Play Equipment and Pools	12
	26. Mailboxes	12

-TABLE OF EXHIBITS-

<u>Exhibit</u>	<u>Name</u>
A	Definitions
B	Property Submitted
C	Additional Property Which May Unilaterally Be Submitted By Declarant
D	Bylaws of The Village at Westgate Homeowners Association, Inc.
E	Portion of Community in Which Association Will Not Be Responsible for Maintenance of Front Yards of Lots

**DECLARATION OF PROTECTIVE COVENANTS
FOR
THE VILLAGE AT WESTGATE**

THIS DECLARATION is made on the date hereinafter set forth by The Baylor Boys, Inc., a North Carolina corporation, and Caliber Homes Limited Partnership, a North Carolina limited partnership, whose sole general partner is Cascade Homes, Inc., a North Carolina corporation ("Declarant").

Background Statement

Declarant is the owner of the real property described in Article II, Section 1 of this Declaration. Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to create a residential community of single family housing and to provide for the subjecting of other real property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration and the additional property subjected to the Declaration as authorized in Article II, Section 2 of this Declaration, including the improvements constructed or to be constructed thereon, are hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**Article I
Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A", attached hereto and by reference made a part hereof.

**Article II
Property Subject To This Declaration**

Section 1. Property Hereby Subjected To This Declaration. The real property described in Exhibit "B," attached hereto and by reference made a part hereof, is, by the recording of this Declaration, hereby subject to the covenants and restrictions hereafter set forth and shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

**Article III
Membership in Association and Voting Rights**

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than

one membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast nor office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it. Fractional voting is prohibited.

Article IV Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, common benefit, use and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal Common Property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments to fund Common Expenses for the general benefit of all Lots; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration.

All such assessments, together with late charges, interest at the rate of ten percent (10%) per annum on the principal amount due, and costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made in favor of the Association and the Association shall be entitled to file a document evidencing such lien in the public registry of the county in which the Lot is located. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage. Second mortgages from any source shall be subordinate to the lien for such assessments. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such public registry shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five business days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified

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Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in monthly installments.

Section 3. Annual Assessment. The maximum annual assessment for the 1997 calendar year shall not exceed Five Hundred Four and 00/100 Dollars (\$504.00) per Lot. From and after the 1997 calendar year, the annual assessment effective for any subsequent year may be increased the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed ten percent (10%) above the maximum assessment for the previous year. From and after the 1997 calendar year, the annual assessment may be increased by a percentage greater than permitted by this Section 3 by an affirmative vote of two-thirds (2/3) of the Total Association Vote at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 4. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. If any of the property described on Exhibit "E," attached hereto and by reference made a part hereof, is subjected to this Declaration, the budget shall reflect that the Owners of Lots within such Exhibit "E" property shall not be obligated to pay any portion of the expenses incurred by the Association in maintaining the front yards of other Lots as provided in Article V, Section 1 of this Declaration. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments upon approval by at least two-thirds (2/3) of the Total Association Vote. Any such special assessments shall be paid as determined by the Board, and the Board may permit such special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

In addition, upon the first sale of each and every Lot to an Owner who will individually or through tenants or assigns occupy a Lot, a special assessment in the amount of Two Hundred Ten and 00/100 Dollars (\$210.00) shall be collected at the closing of such sale for the benefit of the Association without the necessity of a vote of the membership. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten days (10) shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any of its respective members who have not paid within

ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest at the rate of ten percent (10%) per annum on the principal amount due from the date first due and payable, all late charges, all costs of collection, including, without limitation, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents, the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the right, but not the obligation, to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Section 7. Date of Commencement of Assessments. The assessments provided for herein shall commence as to a Lot when a certificate of occupancy has been issued by the appropriate governmental entity for such Lot. Assessments shall be due and payable in a manner and on a schedule as the Board may provide. Notwithstanding the above, any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

Section 8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors, and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible under Article V, Sections 1 and 2 of this Declaration shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

(a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

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Specific assessments shall be in addition to, and not in lieu of, the annual assessments described in Section 3 above.

Section 9. Budget Deficits During Declarant Control. For so long as Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant at rates no greater than those charged by commercial lending institutions at the time the loan is made, the terms of which loans shall not exceed the time during which the Declarant has the right to appoint the members of the Board of Directors of the Association as provided in Article III, Section 3 of the Bylaws; or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Section 10. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action required under Article IV, Sections 3 and 5 of this Declaration shall be sent to all members not less than thirty (30) 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 sixty percent (60%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, 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.

Article V

Maintenance; Conveyance of Property to Association

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall also be responsible for maintenance of and all liability associated with storm drainage pipes and drainage devices for detention and retention of storm water which are located in the Community outside any public street or right-of-way, to the extent such responsibility has not been assumed on an ongoing basis by a local governmental entity. The Association shall also maintain: (a) all entry features for the Community for which easements are shown on the recorded plats of any portion of the Community, including the expenses for landscaping, water and electricity, if any, provided to all such entry features; (b) streetscapes located at other street intersections within the Community; (c) the front yards of Lots up to the side yard fences constructed by Declarant on each Lot (including, but not limited to, raking leaves, and mowing, edging, trimming and other normal, recurring maintenance of existing landscaping but not including replacement of plant materials). Notwithstanding the above subparagraph, the Association shall not be responsible for maintaining any portion of the yards of Lots located within any portion of the property described on Exhibit "E," attached hereto and by reference made a part hereof.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, invitees or contractors of any Owner, and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall be responsible for paying the Common Expenses of the Association associated with its maintenance responsibilities described herein.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance shall include, without limitation, (i) the repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other structures located on the Lot; (ii) the seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns; (iii) the pruning and trimming of all trees, hedges and shrubbery not maintained by the Association so that the same are not obstructive of a view by motorists or pedestrians of street traffic, do not cause unsightly or unkempt conditions and do not trespass onto the property of others; and (iv) the maintenance, repair and painting of all fences on the Lot. If the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Party Fences.

(a) **General Rules of Law to Apply.** Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) **Damage and Destruction.** If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who

has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Any Owner performing any such repair or restoration shall have the right to go upon the adjoining Lot(s) to the extent necessary to perform such repair or restoration. Such repair or restoration shall be done expeditiously and upon completion, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such repair and restoration as is reasonable possible.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. If any Owner desires to sell his or her Lot, such Owner may, in order to assure a prospective purchaser that no adjoining Lot Owner has a right of contribution as provided in this subsection (d), request of the adjoining Lot Owner(s) a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Lot Owner to make such certification upon request.

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 4. Conveyance of Property by Declarant to Association. Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyance shall be free and clear of all encumbrances except utility, drainage and greenway easements and accepted by the Association and the property shall thereafter be Common Property to be maintained by the Association, for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section except for any improvements required by governmental entities to be made by Declarant. Declarant shall be obligated to convey any Common Property shown on any plat recorded with the Wake County Register of Deeds identified on Exhibit "B" to this Declaration prior to the sale of the first Lot within the recorded plat.

Article VI Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XII, Section 4 hereof regarding amendment of this Declaration. The Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to the Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, cancelled, or modified by the Board or the members in a regular or special meeting by a majority of the Total Association Vote. The Association and any aggrieved Owner shall have standing and the power to enforce such regulations and use restrictions.

Section 2. Residential Use. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on, in

or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may, but shall not be obligated to, permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities.

Section 3. Architectural and Landscaping Standards. No exterior construction, alteration, addition, erection or landscaping of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, color, texture and location shall have been submitted in writing to and approved by an Architectural Control Committee ("ACC").

The ACC may be established such that it is divided into two subcommittees, with one subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee. The Declarant shall have the right to appoint all members of the ACC until the first to occur of the following: (a) ten (10) years after the recording of this Declaration, or (b) when the Declarant no longer owns any property for development and/or sale in the Community or that can be unilaterally annexed to the Community by Declarant. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ACC.

If the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the completed plans and specifications have been submitted to it, the foregoing will be deemed approved. However, all activities commenced pursuant to such plans which have been deemed approved shall be consistent with such plans.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the ACC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XII, Section 1 hereof, record in the appropriate public registry a notice of violation naming the violating Owner.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ACC, THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE ACC, THE

BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ACC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 4. Signs. No sign of any kind shall be erected within the Community without the prior written consent of the ACC except (a) when offering a Lot or residence for sale or for lease, not more than one professionally lettered "For Sale" and "For Rent" sign consistent with the Community-Wide Standard and having a maximum area of three square feet, (b) any signs required by legal proceedings or ordinances, and (c) signs erected by Declarant. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs.

Section 5. Vehicles/Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, limousines and automobiles. Vehicles of Owners, their children or their tenants shall not be parked on any street within the Community or on any portion of a Lot other than the driveway or the garage.

No towed vehicle, trailers, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, truck with camper top, trucks (except pick-up trucks or sport utility vehicles), commercial vehicles (including, without limitation, vehicles with commercial writing on their exteriors), motorcycle, minibike, scooter, go-cart or similar recreational vehicles shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than 48 consecutive hours (the intent of this provision is that the aforementioned recreational vehicles may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from a Lot to break the continuity of the 48 consecutive hours shall not be sufficient to establish compliance with this restriction). Any such vehicle shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

All single-family detached homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

No vehicle may be left upon any portion of the Community, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Any such vehicle shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board. All parking shall be subject to such rules and regulations as the Board may adopt.

Section 6. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, the Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing.

Section 7. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, except that dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board, may be kept on a Lot; provided, however, those pets which, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of any Lot or the owner of any property located adjacent to the Community, may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for such structure have been approved by the ACC in accordance with this Declaration.

Section 9. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 10. Unsightly or Unkempt Conditions. 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 in any part of the Community except in an enclosed garage.

Section 11. Antennas. Unless reasonably screened and located as approved by the ACC, no exterior antennas of any kind, including without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Community, including any Lot. In no event shall any such antenna in excess of one meter in size be permitted in the Community except if installed by the Declarant or the Board as provided in this Section. Declarant and the Board shall have the right (but shall not be obligated), to erect a master antenna, satellite dish or other similar master system for the benefit of the entire

Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

Section 12. Tree Removal. No trees that are more than four (4) inches in diameter (twelve and one-half (12 1/2) inches in circumference) at a point four and one-half (4 1/2) feet above the ground shall be removed without the prior written consent of the ACC except (a) dead or diseased trees, (b) trees that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence or a driveway, (c) trees removed by Declarant, or (d) trees removed during the construction of the original dwelling on a Lot. No trees shall be planted in the Community without the prior written consent of the ACC.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for the benefit of Declarant (for as long as the Declarant owns property for development and/or sale in the Community or which can be unilaterally annexed by Declarant to the Community, but in no event later than ten (10) years after the recording of this Declaration) and the Association and their respective successors and assigns (perpetually) an easement across the Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 14. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 15. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on the evening before a pick-up is to be made as necessary to provide access to Persons making such pick-up. All rubbish, trash, and garbage shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by Declarant.

Section 16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ACC. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant for as long as Declarant has the right unilaterally to annex additional property to the Community pursuant to Article IX, Section 1 of this Declaration. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations and shall not constitute a violation of Section 2 of this Article VI of the Declaration.

Section 17. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, bows and arrows, sling shots and small firearms of all types.

Section 18. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the ACC. The ACC may issue guidelines detailing acceptable fence styles or specifications but in no event may an uncoated chain link or barbed wire fence be approved.

Section 19. Utility Lines. Except as may be permitted by the ACC, no overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 20. Air-Conditioning Units. No window air conditioning units may be installed except as may be permitted by the ACC, but in no event shall a window air conditioning unit be installed in any dwelling so as to be visible from the front of any Lot or any adjoining street.

Section 21. Lighting. Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights from Thanksgiving to the following New Year's Day; or (e) front house illumination of model homes.

Section 22. Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items. No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, bird baths, bird houses, and similar items must be approved by the ACC; but in no event shall be located so as to be visible from the front of any Lot or any adjoining street.

Section 23. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

Section 24. Swimming Pools. No swimming pool or outside jacuzzi or hot tub shall be constructed, erected or maintained upon any Lot without the prior written consent of the ACC and in no event shall any above-ground swimming pool be permitted.

Section 25. Gardens, Play Equipment and Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), or pool shall be constructed, erected or maintained upon any Lot unless the type and location thereof has been previously approved by the ACC.

Section 26. Mailboxes. All mailboxes and mailbox posts shall be of a similar style and color as that installed initially by Declarant.

Section 27. Exteriors. Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by the ACC.

Section 28. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 29. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ACC.

Section 30. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

Section 31. Fuel or Water Tanks. No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant in the ordinary course of developing the Community.

Section 32. Outbuildings and Similar Structures. No structure of a temporary nature, unless approved in writing by the ACC, shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently. However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

Section 33. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling of such erosion or siltation.

Article VII Insurance and Casualty Losses

Section 1. Insurance by Association. The Board or the duly authorized agent of the Association shall have the authority to and shall obtain or cause to be obtained insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00).

The Board is hereby authorized, but not required, to contract with or otherwise arrange to obtain the insurance coverage required hereunder through Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and its members upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through Declarant.

Premiums for all insurance shall be Common Expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall

not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for the respective benefitted parties. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagees having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the directors' best business judgment, and, if available, shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the

exclusion of persons serving without compensation and may not be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA"), or the U.S. Department of Housing and Urban Development ("HUD").

Section 2. Damage and Destruction -- Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote otherwise agree.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of its members, levy a special assessment against all Owners subject to its jurisdiction in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

Section 3. Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1 of this Declaration.

Section 4. Insurance Deductible. The deductible for any casualty insurance policy shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the purchase of such insurance, for maintenance of the damaged or destroyed property.

Article VIII
Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Article VII, Section 2 above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX
Annexation and Withdrawal of Property

Section 1. Unilateral Annexation By Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof to the provisions of this Declaration by obtaining the approval of the Raleigh City Attorney and by filing for record in the public registry of the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, Declarant may include additional restrictions and limitations affecting any such annexed real property.

(b) The Declarant shall be obligated to annex enough property to the Declaration so that the Community consists of no less than ten (10) acres of real property as required by the Raleigh City Code Section 10-3071(b)(9)b. After no less than ten (10) acres have been subjected to this Declaration, the rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of Declarant (so long as Declarant has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant so long as the consent of Declarant is required), the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by obtaining the approval of the Raleigh City Attorney and by filing for record in the public registry of the county in which the property to be annexed is located

a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association, whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Section 3. Common Property Within Annexed Property. Prior to the sale of the first Lot within any real property annexed to the Community pursuant to this Article IX, all Common Property within such annexed real property will be conveyed to Association with any such conveyance conforming to the requirements of Article V, Section 4 of this Declaration.

Section 4. Reserved Declarant Rights. As long as the Declarant has the unilateral right to annex additional property to the Community as provided in this Article IX, the Declarant reserves the following development rights: (i) to add Common Property to the Community; (ii) to modify or change dwelling unit types within the Community; and (iii) to reallocate dwelling units or Lots within the property described on Exhibit "B" attached hereto and any property annexed to the Community pursuant to this Article IX. Additional properties described on Exhibit "C" shall include lands contiguous to said existing property and consisting of not more than 22.538 () acres; with a maximum number of One Hundred Twenty Two (122) dwelling units, and Ten (10) dwelling units per acre.

Article X Mortgage Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to this Declaration and the Bylaws notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or the Bylaws which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors of the Association, the following actions shall require the prior approval of the VA, so long as the VA is guaranteeing any Mortgage in the Community, and HUD, so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1 hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mortgaging of Common Property; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, the Bylaws, the Articles of Incorporation of the Association.

Section 5. Applicability of Article I. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Section 7. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Article XI Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, if any, which shall be appurtenant to and shall pass with the title to such Lot, subject to the following provisions:

(i) the right of the Association, subject to the laws of the City of Raleigh, to charge reasonable admission and other fees for the use of any portion of such Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property;

(ii) the right of the Association to suspend the right of an Owner to use and enjoy the Common Property for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property if approved by the affirmative vote of the members entitled to at least two-thirds (2/3) of the votes appurtenant to the Lots then subject to the Declaration; provided, however, the lien and encumbrance of any such Mortgage shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community.);

(iv) the right of the Association to dedicate or grant licenses, permits or easements over, under and through the Common Property to governmental entities for public purposes;

(v) subject to the approval of the City of Raleigh, the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as Declarant has the right unilaterally to annex additional property to the Community); and

(vi) the right of the Association to exchange all or any portion of the Common Property for other property provided (1) written notice of the exchange is given to each member of the Association (except in cases where the exchange is to eliminate an encroachment); (2) after such notice is given, the exchange is approved by the affirmative vote of members entitled to at least two-thirds (2/3) of the votes appurtenant to Lots then subject to the Declaration; (3) the exchanged properties and other consideration are of like value and utility; (4) the acreage and configuration of the remaining Common Property (including the property to be received by the Association in the exchange) equals or exceeds the requirements of the Raleigh City Code; and (5) the exchange is approved by the Raleigh City Attorney.

(b) Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

Section 3. Easements for Utilities. There is hereby reserved to Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or

security system which Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 5. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 6. Sideyard Area.

(a) General.

(i) Definition of Sideyard Area. Declarant desires to create a seven (7) foot wide side yard area along the entire common, side boundary line between every two (2) Lots sharing a common side boundary line (hereinafter referred to as the "Sideyard Area"). As indicated on any recorded subdivision plat for the Property by the three (3) foot building setback line extending along one side of each Lot for its entire length (hereinafter referred to as the "Three Foot Setback Line"), Declarant may construct dwellings on each Lot within three (3) feet of one of the side boundary lines. The three (3) foot wide area between the Three Foot Setback Line and the closest side boundary line of such Lot will be hereinafter referred to as the "Three Foot Use Area", and the four (4) foot wide strip of land located contiguous to each Three Foot Use Area on each adjoining Lot will be hereinafter referred to as the "Four Foot Use Area". Each Sideyard Area shall consist of the Four Foot Use Area on one Lot and the contiguous Three Foot Use Area on the adjoining Lot.

(ii) Statement of Intent. As provided below, Declarant intends that each Owner shall be restricted to using its Three Foot Use Area for maintenance purposes only and shall have a limited maintenance easement over the contiguous Four Foot Use Area. Declarant also intends that each Owner shall be allowed to use its Four Foot Use Area for any purpose not restricted hereby and shall have a full use and enjoyment easement over the contiguous Three Foot Use Area. In other words, Declarant intends that all such Lots have the right to the full use and enjoyment of the Sideyard Area on the side of the house where the patio is located, but be limited to using the Sideyard Area on the other side of the house for maintenance purposes.

(b) Easements.

(i) Reservation of Maintenance Easement. Declarant, as the owner of each Lot, hereby reserves unto the Owner of each Lot a nonexclusive easement of access, ingress and egress over the Four Foot Use Area on the Lot adjoining the Three Foot Use Area located on such Lot for the purpose of entering the Four Foot Use Area at reasonable times and under reasonable circumstances to construct, reconstruct, maintain and repair its Lot and the improvements located thereon (hereinafter referred to as the "Maintenance Easement"). Such easement shall be appurtenant to and run with title to each Lot for the benefit of the Owner, from time to time, of such Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Lot.

(ii) Reservation of Use and Enjoyment Easement. Declarant, as the owner of each Lot, hereby reserves unto the Owner of each Lot a nonexclusive easement of access, ingress and egress over the Three Foot Use Area on the Lot adjoining the Four Foot Use Area located on such Lot for the purpose of fully using and enjoying such Three Foot Use Area in any manner permitted by this Declaration, including such purposes as landscaping, fencing, general recreation, access, drainage and other visual, aesthetic and recreational purposes (hereinafter referred to as the "Use Easement"). Such easement shall be appurtenant to and run with title to each Lot for the benefit of the Owner, from time to time, of such Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Lot. Notwithstanding the foregoing, each Owner shall not place any structures within such Three Foot Use Area on an adjacent Lot in such a manner or such a location that the structure would unreasonably interfere with the construction, reconstruction, maintenance or repair of any wall, fence or the dwelling lying on the adjacent Lot, as provided in subsection (b)(i) above. If any such structure interferes with the Owner of the adjacent Lot's ability to construct, reconstruct, maintain or repair its Lot and the improvements located thereon, then the Owner of the adjacent Lot shall not be liable for any damage to such structure which occurs in the course of such permitted work.

(c) Use Restrictions.

(i) Restrictions on Three Foot Use Area. Each Owner shall only utilize its fee simple title to the Three Foot Use Area on its Lot for the purpose of constructing, reconstructing, maintaining and repairing its Lot and the improvements constructed thereon at reasonable times and under reasonable circumstances. Each Owner shall not permit eaves, gutters or overhangs of its dwelling to extend more than twelve (12) inches onto such Three Foot Use Area or construct, install or otherwise cause to be made any door, window, duct, vent or aperture of any kind on the side of its dwelling that abuts or adjoins such Three Foot Use Area. In exercising its right of entry upon the Three Foot Use Area, as provided above, each Owner shall use reasonable care not to damage any landscaping or other items existing in the Sideyard Area; provided, however, such Owner shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard Area for authorized purposes.

(ii) Restrictions on Four Foot Use Area. Each Owner may utilize its fee simple title to the Four Foot Use Area for any purpose not restricted by this Declaration, including such purposes as landscaping, general recreation, access, drainage and other visual, aesthetic and recreational purposes.

(iii) Restrictions on Sideyard Area. Each Owner shall not (i) suffer or permit any waste upon the Sideyard Area; (ii) undertake any use of or affix any object to any wall, fence or other structure on an adjacent Lot; (iii) undertake any grading that would tend to prevent proper drainage of the Sideyard Area, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on an adjacent Lot; (iv) place or permit the accumulation of any soil or fill material against any wall, fence or other

structure on an adjacent Lot to a height which exceeds original grade; (v) cause, suffer or permit any damage to any utility lines located within the Sideyard Area or interrupt or interfere with the maintenance and repair thereof; (vi) construct, erect or install any structure upon, across, over, under or within the Sideyard Area or undertake any grading or fill or any other activity upon the Sideyard Area which violates any applicable governmental statute, ordinance, rule or regulation or the provisions of this Declaration; (vii) stack wood or permit trees, shrubbery or other vegetation to grow on the Sideyard Area which would cause damage to or interfere with the maintenance and repair of any wall, fence or the dwelling on an adjacent Lot; (viii) cause or permit any offensive contact (including without limitation, any pounding or bouncing of objects) with any wall of the dwelling on an adjacent Lot; (ix) suffer or permit upon the Sideyard Area any activities by household pets or other animals which would tend to cause damage to or undermine support for any wall, fence or other structure on an adjacent Lot; or (x) cause or permit to exist any open, uncontained fire on the Sideyard Area. The existence of air conditioning and heat-pump units shall be permitted in the Sideyard Area provided such units have been approved by the ACC and do not interfere with the rights granted in this Section.

(d) Maintenance. Each Owner shall maintain the Sideyard Area that consists of the Four Foot Use Area located on its Lot and the Three Foot Use Area that is adjacent to the Four Foot Use Area located on its Lot at its sole cost and expense.

(e) Disputes. In the event that a dispute arises concerning the respective rights and obligations of the Owners of contiguous Lots pursuant to this Section 6, then the Association shall act as arbitrator of said dispute and may enforce the Association's decision in accordance with the provisions of this Declaration.

Section 7. Easement for Entry Features. There is hereby reserved to Declarant and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar streetscapes, signage and lighting for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

Section 8. Pedestrian Easements. Declarant hereby expressly reserves perpetual pedestrian easements for access to the Common Property for the benefit of the Associations and Owners if and to the extent any such easement is shown on any plat for the Community recorded by Declarant in the public registry of the county where the Community is located. Except as may be authorized by the Board in its sole discretion, no motorized vehicles of any type whatsoever shall be permitted on any such easement area. No Owner of a Lot encumbered by such an easement shall be permitted to take any action that would diminish the use rights granted to the Owners by this easement, including, without limitation, the construction or erection of buildings, structures or other barriers such as fences, vegetation or drainage ditches.

Section 9. Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, use restrictions, rules and regulations, design guidelines, and any amendments thereto, for as long as Declarant owns any property in the Community for development and/or sale or which can be unilaterally subjected by Declarant to the Declaration, but in no event later than ten (10) years after the recording of this Declaration, Declarant reserves an easement across all Community property for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B"

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and Exhibit "C" to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including, without limitation, the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities, if any, within the Community as a sales office without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without Declarant's express written consent until Declarant's rights hereunder have terminated as hereinabove provided.

Section 10. Greenway - City of Raleigh Approval. Notwithstanding any other provisions of this Declaration, the Declarant, the Association, its members, the Owners, Occupants, or guests, invitees or families of the above shall not, within any portion of the Common Property which is greenway area dedicated to the City of Raleigh, if any, without the prior written consent of the City of Raleigh, do any of the following:

- (a) grant easements of any nature whatsoever,
- (b) remove any trees or vegetation;
- (c) erect gates, fences or other structures;
- (d) place any garbage receptacles;
- (e) fill or excavate; or
- (f) plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including, without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any such greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including, without limitation, hours of operation), which shall be equally applicable to the general public and the Owners. The Association may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City, and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

Article XII
General Provisions

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or any applicable rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. The Association shall also have the right to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for an infraction of the Declaration, the Bylaws or any rules and regulations applicable to such Owner for a period no longer than thirty (30) days after the infraction has been corrected.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as, and to the extent that, North Carolina law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of at least two-thirds (2/3) of the Lots and Declarant (so long as Declarant has the right unilaterally to annex additional property to the Community) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least three-fourths (3/4) of the Lots. Amendments to and any termination of this Declaration shall become effective when approved by the Raleigh City Attorney and filed for record in the Wake County Registry, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to Declarant shall be amended without Declarant's prior written approval so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to this Declaration.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the appropriate court in the county in which the Community is located within one (1) year of the recordation of such amendment in the public registry of the county in which the Community is located.

Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9. Indemnification. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or

director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The right to indemnification of officers and directors provided herein shall not apply to any liability of such officers or directors by reason of being or having been a member in the Association. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 10. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made;

and

(iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 11. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the financial statements at the annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a Common Expense by an independent certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

Section 12. Notice of Sale or Lease. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing,

the name and mailing address of the Owner and such other information as the Board may reasonably request.

Section 13. Agreements. Subject to the prior approval of Declarant (so long as Declarant has the right unilaterally to annex additional property to the Community), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 14. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 15. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from the provisions of Article VI of this Declaration, and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community. No variance shall be issued which is inconsistent with the Raleigh City Code.

Section 16. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant pursuant to Article XII, Section 4 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 17. Density Transfers. The property comprising the Community is a part of a cluster unit development approved by the Raleigh City Council in which residential density transfers are permitted. Therefore, even though some Lots may appear to contain sufficient land area to construct additional dwelling units, prior approved density transfers within the cluster unit development may in fact preclude City of Raleigh approval of additional dwelling units.

IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized representatives and under seal this 18 day of June, 1997.

THE BAYLOR BOYS, INC., a North Carolina corporation

By: [Signature]
President

Attest: [Signature]
Secretary

[Corporate Seal]

NORTH CAROLINA, Wake COUNTY

BK 7514 PG 0394

I, a Notary Public of the County and State aforesaid, certify that John W. Tichenor Jr., personally appeared before me this day and acknowledges that (s)he is Secretary of The Baylor Boys, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him(her) as its Secretary.

Witness my hand and official stamp or seal, this 18 day of June, 1997.

[Signature]
Notary Public



My Commission Expires: 11/19/99
(STAMP/SEAL)

CALIBER HOMES LIMITED PARTNERSHIP, a North Carolina limited partnership, by its general partner

By: Cascade Homes, Inc., a North Carolina corporation

By: [Signature]
Ronald E. Peiffer, Vice President

Attest: [Signature]
Tammy Schuft, Asst. Sec.

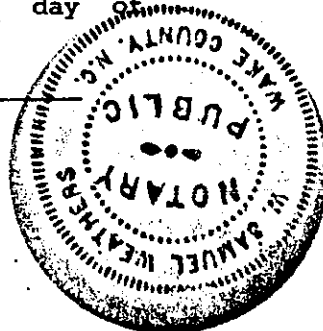
[Corporate Seal]

Wake Co., North Carolina

* General Partner of Caliber Homes Lim. P'ship
I, a Notary Public of the County and State aforesaid, certify that Tammy Schuft, personally appeared before me this day and acknowledges that she is Asst. Sec. of Cascade Homes, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by her as its Asst. Sec.

Witness my hand and official stamp or seal, this 4 day of June, 1997.

[Signature]
Notary Public



My Commission Expires: 11/19/99
(STAMP/SEAL)

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of W. Samuel Weathers

Notary 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.

AURA M. RIDDICK, Register of Deeds

By [Signature]
Asst./Deputy Register of Deeds

BK 7514 PG 0395

Declaration

-TABLE OF EXHIBITS-

<u>Exhibit</u>	<u>Name</u>
A	Definitions
B	Property Submitted
C	Additional Property Which May Unilaterally Be Submitted By Declarant
D	Bylaws of The Village at Westgate Homeowners Association, Inc.
<u>E</u>	<u>Portion of Community in Which Association Will Not Be Responsible for Maintenance of Front Yards of Lots</u>

EXHIBIT "A"

Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean The Village at Westgate Homeowners Association, Inc., a nonprofit North Carolina corporation, its successors and assigns.

(b) "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina law.

(c) "Bylaws" shall refer to the Bylaws of The Village at Westgate Homeowners Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(d) "Common Expenses" shall mean the expense anticipated or actually incurred by the Association in maintaining, repairing, replacing, insuring and operating the Common Property, including, without limit, the payment of ad valorem taxes and assessments levied against the Common Property, and otherwise for the benefit of all Lots.

(e) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners as well as (i) sanitary sewer lines serving the Community located outside any public street, City of Raleigh sanitary sewer easement or Lot; (ii) water lines serving the Community located outside any public street or Lot; and (iii) storm drainage pipes and drainage devices for detention and retention of storm water which are located within the Community and outside any public street right-of-way.

(f) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "C" attached hereto; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(g) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.

(h) "Declarant" shall mean and refer to The Baylor Boys, Inc., a North Carolina corporation, and Caliber Homes Limited Partnership, a North Carolina limited partnership, collectively, and their successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

Notwithstanding anything provided herein to the contrary, during such time as Caliber Homes Limited Partnership is the owner of any real property described in Exhibit "B", attached hereto, or Exhibit "C", attached hereto (1) Caliber Homes Limited Partnership shall be entitled to exercise the rights and powers of the Declarant hereunder without any action or prior approval of The Baylor Boys, Inc. or its successors-in-title or assigns, and (2) The Baylor Boys, Inc., or its successors-in-title or assigns, shall not be entitled to exercise the rights and powers of the Declarant hereunder without the prior written consent of Caliber Homes Limited Partnership. At such time as Caliber Homes Limited Partnership does not own or have under contract to purchase any portion of the real property described in Exhibit "B", attached hereto, or Exhibit "C", attached hereto, Caliber Homes Limited Partnership shall cease to be a Declarant, and The Baylor Boys, Inc., or its successor-in-title or assign, shall then constitute the sole Declarant for all purposes, it being understood that, as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

(i) "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of the County where the Community is located, excluding any Common Property owned in fee by the Association. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(j) "Mortgage" means any mortgage, deed to secure debt, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

(k) "Mortgagee" shall mean the holder of a Mortgage.

(l) "Occupant" shall mean any Person occupying all or any portion of a residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(m) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(n) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, limited liability company, or other legal entity.

(o) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(p) "Total Association Vote" means all of the votes attributable to members (including votes of Declarant), and the consent of Declarant so long as Declarant has the right to unilaterally annex additional property to the Community.

BK 7514 PG 0398

Exhibit "B"

Property submitted

BEING all of that certain tract or parcel of land containing 10.42 acres and described as "Village at Westgate, Phase 1" as shown on the map recorded in Book of Maps 1997, Page 935, Wake County Registry dated 3-19-97 and prepared by Griffin Land Surveying.

Exhibit "C"

Additional property which may be unilaterally submitted by declarant

Parcel 1: BEING all of that certain tract or parcel containing 3.008 acres and described as "Tract 1" on the survey entitled "The Village at Westgate and Pemberton Recombination" prepared 12-26-96 by Combined Surveying Resources and recorded in Book of Maps 1997, Page 275, Wake County Registry;

Parcel 2: BEING all of that certain tract or parcel containing 19.51 acres described as "Tract 2" as shown on the survey entitled "The Village at Westgate and Pemberton Recombination" prepared 12-26-96 by Combined Surveying Resources and recorded in Book of Maps 1997, Page 275, Wake County Registry; save and except that certain parcel or tract of land containing 10.42 acres and described as "Village at Westgate, Phase 1" as shown on the map prepared 3-19-97 by Griffin Land Surveying and recorded in Book of Maps 1997, Page 935, Wake County Registry.

BK 7514PG0400

EXHIBIT "D"

BYLAWS

OF

THE VILLAGE AT WESTGATE HOMEOWNERS ASSOCIATION, INC.

- TABLE OF CONTENTS -

	Page
I. NAME, MEMBERSHIP, AND DEFINITIONS	1
1. Name	1
2. Membership	1
3. Definitions	1
II. ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES	1
1. Place of Meetings	1
2. First Meeting and Annual Meetings	1
3. Special Meetings	1
4. Notice of Meetings	1
5. Waiver of Notice	2
6. Adjournment of Meetings	2
7. Voting	2
8. Proxies	2
9. Quorum	2
10. Action Without a Formal Meeting	2
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS	2
A. <u>Composition and Selection</u>	2
1. Governing Body; Composition	2
2. Directors Appointed by Declarant	3
3. Number of Directors	3
4. Nomination of Directors	3
5. Election and Term of Office	3
6. Removal of Directors	3
7. Vacancies	4
B. <u>Meetings</u>	4
8. Organization Meetings	4
9. Regular Meetings	4
10. Special Meetings	4
11. Waiver of Notice	4
12. Quorum of Board of Directors	4
13. Compensation	5
14. Open Meetings	5
15. Executive Session	5
16. Action Without a Formal Meeting	5
17. Telephonic Participation	5
C. <u>Powers and Duties</u>	5
18. Powers	6
19. Management Agent	6
20. Fining Procedure	7
IV. OFFICERS	7
1. Officers	7
2. Election, Term of Office, and Vacancies	7
3. Removal	7
4. President	7
5. Vice President	7
6. Secretary	7
7. Treasurer	7
8. Resignation	7

	<u>Page</u>
V. COMMITTEES	7
VI. MISCELLANEOUS	8
1. Fiscal Year	8
2. Parliamentary Rules	8
3. Conflicts	8
4. Amendment	8

BYLAWS
OF
THE VILLAGE AT WESTGATE HOMEOWNERS ASSOCIATION, INC.

Article I
Name, Membership, and Definitions

Section 1. Name. The name of the Association shall be The Village at Westgate Homeowners Association, Inc. (the "Association").

Section 2. Membership. The Association shall have one (1) class of membership, as is more fully set forth in that Declaration of Protective Covenants for The Village at Westgate (this Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II
Association: Meetings, Quorum, Voting, Proxies

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by at least twenty-five percent (25%) of the Total Association Vote (the consent of the Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Unless otherwise provided by the Declaration, notices shall be served not less than ten (10) nor more than thirty (30) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

Section 8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. Unless otherwise provided by the Declaration, the presence, in person or by proxy, of twenty-five percent (25%) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 10. Action Without A Formal Meeting. Any action to be taken at a meeting of the members or any action that may be taken at a meeting of the members may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by the members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant if required. Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Article III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the directors must reside in the Community and shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time. Corporate Owners may serve on the Board only if the person designated by the corporation to represent its interests resides in the Community.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of seven (7) years after the date of the recording of the Declaration; (b) the date on which seventy-five percent (75%) of the Lots which are developed on the real property described in Exhibit "B" and Exhibit "C" of the Declaration shall have been conveyed to Persons who have not purchased such Lots for the purpose of construction of a residence and resale of such Lot and residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a

Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

Section 3. Number of Directors. The Board shall consist of not less than three (3) nor more than five (5) members. For as long as the Declarant shall have the right to appoint any member or members of the Board of Directors as provided in Article III, Section 2 herein, the Board shall consist of three (3) members.

Section 4. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) After the Declarant's right to appoint directors and officers terminates, the Association shall call a special meeting to be held at which Owners shall elect three (3) directors (or five (5) directors if, at any meeting at which Owners are electing directors the Board announces that it has elected to increase the number of directors to five (5) directors).

(b) At annual meetings of the membership thereafter, directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected; provided, however, the initially elected directors shall serve the remainder of their terms. Cumulative voting shall be prohibited.

The term of one (1) director shall be fixed at one (1) year, the term of one (1) director shall be fixed at two (2) years, and the term of one (1) director shall be fixed at three (3) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. In addition, if the Board is increased to five (5) members, the additional two (2) directors shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed, with or without cause, by a Majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a Majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by a majority of the directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by telegram, charges prepaid; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Total Association Vote.

Section 14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, imposition of fines, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 16. Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 17. Telephonic Participation. One (1) or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all directors participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 19. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

Section 20. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

(i) the alleged violation;

(ii) the action required to abate the violation;

and

(iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

(b) **Notice.** Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

(i) the nature of the alleged violation;

(ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine;

(iii) that any statements, evidence, and witnesses may be produced by the alleged violator at the hearing; and

(iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) **Hearing.** If a hearing is requested, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

Article IV
Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under Article III, Section 2, of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Non-Profit Corporation Act.

Section 5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall cause an annual review (or, if requested by a resolution of the Board of Directors or by a majority of the Total Association Vote, an audit) of the corporate books to be made by an independent certified accountant at the completion of each fiscal year.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V
Committees

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Article VI
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, these Bylaws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

Section 4. Amendment. The Bylaws may be amended by the Board of Directors; provided, however, that the U.S. Department of Veterans Affairs ("VA") (if it is then guaranteeing any Mortgage in the Community) and/or the U.S. Department of Housing and Urban Development ("HUD") (if it is then insuring any Mortgage in the Community) shall have the right to veto material amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

ARTICLES OF INCORPORATION
OF
THE VILLAGE AT WESTGATE HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of Chapter 55A of the General Statutes of North Carolina, the undersigned - a natural person of full age - has this day executed these Articles of Incorporation for the purpose of forming a non-profit, non-stock, membership corporation and hereby certifies:

ARTICLE I: NAME

The name of the corporation is THE VILLAGE AT WESTGATE HOMEOWNERS ASSOCIATION, INC., herein referred to as "Association".

ARTICLE II: REGISTERED OFFICE AND INITIAL AGENT

The registered office of the Association is located in Wake County, North Carolina at 1550 Glenwood Avenue, Raleigh, NC 27608. The name of the initial registered agent at such address is W. Samuel Weathers. The location of the registered office as well as the initial registered agent may be changed at any time by a majority vote of the Board of Directors.

ARTICLE III: PURPOSE AND POWERS OF ASSOCIATION

This Association does not contemplate a pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, architectural control and management of residential Lots and Common Property within that:

single-family residential subdivision located in Wake County, North Carolina, and referred to herein as "The Village at Westgate", which development will be done in phases, the first of which is known as "The Village at Westgate - Phase I" as shown on plat thereof recorded in Map Book ____ at Page ____ in the Wake County Public Registry, and to promote the health, safety and welfare of the residents within The Village at Westgate and for this purpose and except as limited by the Declaration hereinafter referred to, the Association shall have the powers to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain DECLARATION OF PROTECTIVE COVENANTS FOR THE VILLAGE AT WESTGATE to be filed for record in the Wake County Public Registry, and as set forth in any Supplementary Declaration filed pursuant to Article IX of said Declaration, and as the same may be amended from time to time, said Declaration and all such Supplementary Declarations and Amendments (hereinafter collectively

referred to as the "Declaration") being incorporated herein as if fully set forth herein;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments made pursuant to the terms of the Declaration; to pay all lawful expenses of the Association, including all office and other expenses incident to the conduct of the business of the Association and all licenses, taxes or governmental charges levied or imposed against the property of the Association and to fund reasonable reserves for future financial needs of the Association;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, grant utility easements, or otherwise dispose of real or personal property or any interest therein owned by the Association in connection with the affairs of the Association; provided that all conveyances of real Common Property shall be subject to the provisions of the Raleigh City Code;

(d) borrow money, and with the consent of members entitled to at least two-thirds (2/3) of the votes appurtenant to the Lots then subject to the Declaration, mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided the rights of any such lender shall be subordinate and subject to the Declaration and to the rights of the Association and Lot Owners provided in the Declaration;

(e) dedicate, sell or transfer all or any part of the Common Property to any public agency, authority, utility or other entity (public or private) for such purposes subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by members entitled to at least two-thirds (2/3) of the votes appurtenant to the Lots then subject to the Declaration, agreeing to such dedication, sale or transfer and the conditions, if any, appurtenant thereto. In addition, any such dedications, sales or transfers of real Common Property shall be subject to the provisions of the Raleigh City Code;

(f) participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation must have the prior approval of the Raleigh City Attorney or his/her deputy and the consent of the members as provided in paragraph (e) above;

(g) annex additional property pursuant to the provisions of Article IX, Section 2 of the Declaration; and

(h) have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit

Corporation Law of the State of North Carolina by law may now or hereafter have or exercise not inconsistent with the Declaration.

ALL CAPITALIZED WORDS AND PHRASES USED HEREIN SHALL HAVE THE SAME MEANING AS SET FORTH IN THE DECLARATION.

ARTICLE IV: FINANCE

The Association is a non-stock corporation, and no part of the profits (if any) of the Association shall inure to the pecuniary benefit of its members or to any other person.

ARTICLE V: MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. No other person or entity shall be a member except by merger or consolidation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

The voting rights of the membership are as provided in Article III of the Declaration and Bylaws of the Association.

ARTICLE VI: BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors. The initial Board shall consist of three (3) members. The maximum and minimum number of Directors, manner in which such number shall from time to time be determined, and the procedures for the election and replacement of Directors shall be as set forth in the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>Name</u>	<u>Address</u>
Ronald E. Peiffer	1100 Navaho Drive, Suite 121 Raleigh, NC 27609
Tammy Schuft	1100 Navaho Drive, Suite 121 Raleigh, NC 27609
John J. Dearing	120 Colony Center Drive Woodstock, GA 30188

ARTICLE VII: DISSOLUTION

The Association may be dissolved only upon the signed written consent of the members entitled to not less than three-fourths (3/4) of the votes appurtenant to all Lots then subject to the Declaration. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency selected by the Board of Directors to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other entity selected by the Board of Directors to be devoted to such similar purposes.

ARTICLE VIII: DURATION

The period of existence of the Association is unlimited.

ARTICLE IX: AMENDMENTS

Amendment to these Articles shall require the consent of the members entitled to at least three-fourths (3/4) of the entire vote of the membership.

ARTICLE X: HUD/VA

As long as Declarant has the right to appoint and remove the directors and officers of the Association as provided in the Bylaws, the following actions shall require the prior approval of the U.S. Department of Veterans Affairs ("VA"), so long as The Village at Westgate is approved by the VA for the guaranteeing of mortgages therein, and the U.S. Department of Housing and Urban Development ("HUD"), so long as The Village at Westgate is approved by HUD for the insuring of mortgages therein: annexation of additional property to the Development, except for annexation by Declarant in accordance with Article IX, Section 1 of the Declaration pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; mergers and consolidations; dedication of Common Property to any public entity; mortgaging of Common Property; dissolution of the Association; and material amendment of these Articles of Incorporation.

ARTICLE XI: INCORPORATOR

The name and address of the incorporator is as follows:

W. Samuel Weathers	1550 Glenwood Avenue
	Raleigh, NC 27608

BK 7514 PG 0415

IN WITNESS WHEREOF, I - the undersigned incorporator - have hereunto set my hand and seal, this ____ day of _____, 1997.

W. Samuel Weathers

STATE OF NORTH CAROLINA
COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that W. Samuel Weathers personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this ____ day of _____, 1997.

My Commission Expires: _____

Notary Public

(STAMP/SEAL)

Exhibit "E"

Portion of community in which association will not be responsible for maintenance of front yards and lots.

BEGINNING at a point in a sanitary sewer easement, said point being North 00 deg. 16 min. 29 sec. East a distance of 1113.17 feet to an existing iron pipe; thence North 33 deg. 10 min. 54 sec. West a distance of 380.08 feet from an existing iron pipe in the southeast corner of Tract 2 and in the northern right-of-way of Westgate Road as shown on a plat entitled "Village at Westgate and Pemberton Recombination" as recorded in Book of Maps 1997, Page 275, Wake County Registry; runs from said point of Beginning thence South 63 deg. 22 min. 45 sec. West 26.87 feet to a point in the said sanitary sewer easement; thence along the sanitary sewer easement South 74 deg. 24 min. 51 sec. West 275.89 feet to a point; thence continuing along the sewer easement North 85 deg. 56 min. 35 sec. West 255.16 feet to a point; thence North 56 deg. 24 min. 49 sec. West 99.49 feet to a point in the western line of Tract 2; thence North 00 deg. 56 min. 24 sec. East 413.86 feet to a point in the southern line of Tract 3 aforesaid; thence along the northern most line of Tract 3 South 89 deg. 28 min. 45 sec. East 100 feet to a point; thence South 89 deg. 03 min. 36 sec. East 45 feet to a point; thence South 00 deg. 56 min. 24 sec. West 59.98 feet to a point; thence along a curve to the left with a radius of 127.50 feet and through a central angle of 5 deg. 41 min. 27 sec., said curve having an arch distance of 12.66 feet and a chord bearing of South 01 deg. 54 min. 20 sec. East 12.66 feet to a point; thence South 88 deg. 40 min. 31 sec. East 194.38 feet to a point; thence South 56 deg. 40 min. 34 sec. East 112.36 feet to a point; thence South 69 deg. 02 min. 00 sec. East 25.10 feet to a point; thence South 33 deg. 10 min. 54 sec. East 300.21 feet to the point and place of BEGINNING and containing 4.873 acres, more or less, and being a portion of Tract 2 as shown on the survey entitled "Village at Westgate and Pemberton Recombination" recorded in Book of Maps 1997, Page 275, Wake County Registry.