

BOOK 3729 PAGE 503

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

CHIMNEY RISE TOWNHOMES

Prepared by and Return to:
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PRESENTED
FOR
REGISTRATION
MAY 22 3 14 PM '86
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY, NC

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF CHIMNEY RISE TOWNHOMES

THIS DECLARATION, made as of this 14th day of May, 1986, by LAKE PINE ASSOCIATES ("Declarant"), a North Carolina limited partnership whose sole general partner authorized to execute this document is CHATEAU CONSTRUCTION CORPORATION, a North Carolina corporation with offices at Cary, North Carolina.

BACKGROUND STATEMENT

Declarant is the owner of the real property (hereinafter referred to as the "Declarant's Parcel") located in the Township of Cary, County of Wake, State of North Carolina, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof. Declarant is constructing on the Declarant's Parcel a phased residential townhome development consisting of single-family attached townhomes. The townhome development shall be known as Chimney Rise Townhomes ("Chimney Rise").

The property described in Exhibit B attached hereto ("Phase I"), which is a part of Declarant's Parcel and is hereby subjected to this Declaration of Covenants, Conditions and Restrictions ("Declaration"), together with any other portions of the Declarant's Parcel hereinafter subjected to this Declaration as hereinafter provided, shall be referred to as the "Properties".

In creating Chimney Rise, Declarant desires to develop a residential community, with certain common areas and facilities to be used for the benefit of the owners of townhomes within Chimney Rise. Declarant desires to provide for the preservation of the values and amenities within Chimney Rise and for the maintenance of the common areas and facilities therein, and therefore desires to subject Phase I to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Declarant's Parcel and each owner of any part of the Properties.

Chimney Rise is a part of Kildaire Farms Planned Unit Development, and is subject to the covenants, restrictions, easements, charges and liens described in that Declaration of Covenants, Conditions and Restrictions of Kildaire Farms Planned Unit Development recorded in Book 3445 at page 618 in the Wake County Registry, as the same now is or is hereafter amended ("Kildaire Farms Declaration"), as the result of an amendment to the Kildaire Farms Declaration dated April 11, 1985 and recorded in Book 3461, at Page 300, in the Wake County Registry.

Declarant has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common areas and facilities of Chimney Rise, of performing at the election of the Association certain exterior maintenance on the townhome units, of administering and enforcing the covenants and restrictions created in this Declaration and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed

necessary or appropriate to promote the recreation, health, safety and welfare of the owners of the townhomes within Chimney Rise.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit B attached hereto shall be held, transferred, sold, conveyed, occupied and used subject to the provisions of the Kildare Farms Declaration, the provisions of which are herein incorporated by reference, and subject to the following easements, restrictions, covenants and conditions, which shall run with the Properties and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit such meaning):

Section 1. "Association" shall mean and refer to Chimney Rise Homeowners Association, Inc., its successors and assigns.

Section 2. "Board of Directors" or "the Directors," shall mean and refer to the Board of Directors of the Association.

Section 3. "Bylaws" shall mean the bylaws of the Association attached hereto as Exhibit C and made a part hereof by reference, as they now are or are hereafter amended.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Properties, but excluding those who have such interest merely as security for the performance of an obligation.

Section 5. "Member" shall mean and refer to every individual, corporation, partnership, association, trustee or other legal entity who is a member of the Association.

Section 6. "Declarant's Parcel" shall mean and refer to the property described on Exhibit A attached hereto and made a part hereof.

Section 7. "Properties" shall mean and refer to the property described in Exhibit B attached hereto and made a part hereof, and any additions thereto as are or shall become subject to the Declaration and brought within the jurisdiction of the Association under the provisions of Article III hereof.

Section 8. "Lot" shall mean and refer to any numbered plot of land with the exception of the Common Area, appearing on any recorded subdivision map of the Properties.

Section 9. "Common Area" shall mean and refer to all real and personal property owned by the Association, and the easements granted to the Association, for the common use and enjoyment of

the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot by Declarant to an Owner shall be all the Properties with the exception of the Lots and any publicly dedicated streets, together with any easements or rights-of-way in favor of the Association, and subject to the easements and other rights described herein.

Section 10. "Declarant" shall mean and refer to Lake Pine associates, and its successor or assign in ownership of all iof the land described in Exhibit A which is not at the time of conveyance a part of the Properties.

Section 11. "Declaration" shalll mean and refer to this Declaration of Covenants, Conditions and Restrictions of Chimney Rise Townhomes, as it now is or is hereafter amended.

Section 12. "Kildaire Farms Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Kildaire Farms Planned Unit Development ("Kildaire Farms Development") recorded in Book 3445 at Page 618 in the Wake Public Registry, as the same now is or is hereafter amended.

Section 13. "Building" shall mean and refer to a multi-unit structure containing Townhomes constructed or erected on the Properties.

Section 14. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a Lot and constituting part of a Building.

Section 15. "Institutional Mortgage", sometimes referred to as "first mortgage" herein, shall mean and refer to a first mortgage or deed of trust executed and delivered to or held through assignment or assignments by an Institutional Lender.

Section 16. "Institutional Lender" shall mean and refer to the Township of Cary, State of North Carolina or United States of America, or any agency or instrumentality of any of the foregoing, or a bank, savings and loan association, insurance company, title insurance company, pension trust, real estate investment trust, or any private or governmental institution which is regularly engaged in the business of mortgage financing, or a subsidiary of any of the foregoing or a designee of any of the foregoing, including, but not limited to, the Veteran's Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA"), First Federal Savings and Loan Association of Raleigh ("FFSL), and the Government National Mortgage Association ("GNMA").

ARTICLE II

KILDAIRE FARMS DEVELOPMENT

The Properties are a part of the Kildaire Farms Development, a planned unit development, as described in the Kildaire Farms Declaration and as shown upon plans for Kildaire Farms Development heretofore filed with the Town of Cary, North Carolina.

Every Owner shall be a member of the Kildaire Farms Homeowner's Association, II, Inc. (the "KF Association") and

shall be subject to the provisions of the Kildaire Farms Declaration and to the bylaws, rules, and regulations of the KF Association; including the covenant to pay assessments to the KF Association set forth in the Kildaire Farms Declaration. The KF Association has the power to assert lien rights against Townhomes for unpaid assessments.

ARTICLE III

SUBJECTING OF ADDITIONAL PROPERTIES TO THIS DECLARATION

Section 1. General. Additional properties and improvements, including Common Area, may be subjected to this Declaration in the manner provided in this Article. Additional properties so subjected shall be considered a portion of the Properties and shall be subject to the provisions of the Kildaire Farms Declaration, this Declaration, and to the respective Articles of Incorporation, Rules and Regulations and Bylaws of the Association and the KF Association.

Section 2. Subjection by Declarant. At any time within ten (10) years following the date of incorporation of the Association, the Declarant may subject to this Declaration additional land within the Declarant's Parcel. Each such subjecting shall not require the consent of the Association or any of its Members, and shall be accomplished by filing of record in the Wake Public Registry a Supplementary Declarations of Covenants, Conditions and Restrictions subjecting such additional land to this Declaration. Each parcel of land shall be contiguous to the Properties and shown on a recorded subdivision plat.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided, however, that such right of the Association and the rights of any such mortgagee shall be subordinate to the rights of the Owners set out herein and provided further that the Association may not so mortgage, pledge, deed in trust or hypothecate any of its property unless it shall have obtained the prior written consent of the holders of at least seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots;

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

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Area, except the right of access to the Member's Lot and the right of access to utility service for such Lot, for any period during which any assessment remains unpaid as a result of any infraction of its published rules and regulations;

(d) The right of the Association to charge reasonable admission fees, guest fees or other fees for use of its facilities or for special uses that might be made of certain parts of the Common Area by Members or by others;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members as provided herein; provided, however, that no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of the Members, agreeing to such dedication or transfer, has been recorded. Such instrument or instruments may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument;

(f) The right of Declarant, prior to the conveyance of the Common Area to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines, conduits and appurtenances thereto for public or private water, sewer, drainage, gas, electricity, telephone and other utilities;

(g) The right of the Association to limit the number of guests of Members as to the use of any facilities situated upon the Common Area or any other property of said Association;

(h) The right of the Association to establish reasonable rules and regulations for the use of any of the facilities from time to time situated upon the Common Area by Members or their guests;

(i) The rights of Owners to use of parking spaces as provided in Section 6 of this Article IV.

Section 2. Title to Common Area. Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the Common Area located on each phase of the Properties to the Association prior to or simultaneously with the date of recordation of the first deed conveying the first Lot in such phase to an Owner other than Declarant. Such conveyance shall be free and clear of all liens and encumbrances, except utility and drainage easements, easements to governmental authorities, rights retained by Declarant herein, and ad valorem taxes for the year in which such conveyance occurs (which taxes shall be prorated as of the date of conveyance and paid when due by Declarant and Association), and shall be upon the condition that the Common Area shall be for the sole and exclusive use and benefit of Members, so long as such area is maintained in conformity with the requirements of this Declaration and the Kildaire Farms Declaration, at the sole expense of the Association. Similarly, the Declarant covenants for itself, its successors and assigns, that it will convey any Common Areas which are parts of any land in the Declarant's Parcel subjected to this Declaration in accordance with Article III hereof to the Association upon the same conditions and for the same uses and purposes set forth above.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common

Area to members of his family, tenants or contract purchasers who reside on the Properties or to such other persons as may be permitted by the Association.

Section 4. *Automatic Membership.* All Owners shall automatically be members of the Association and the KF Association, and shall enjoy the privileges and be bound by the obligations contained in the respective Articles of Incorporation, Bylaws and Rules and Regulations of the Association and the KF Association, including the obligation to pay assessments set forth in Article VI of the Kildaire Farms Declaration. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association and the KF Association; no Owner shall have more than one membership for each Lot Unit owned in the Association or the KF Association; and there shall be only one vote per Member in the Association and the KF Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board of Directors may make reasonable rules regarding proof of ownership.

Section 5. *Parking Rights.* The Owner or Owners of each Lot shall be entitled to the use of two (2) automobile parking spaces (one of which shall be an enclosed space), together with the right of ingress and egress in and upon said parking area. The Board of Directors shall have full authority, at its sole discretion, to assign parking spaces for Owners and visitors from time to time as it may determine is in the best interest of the Members. No boats, trailers, vans, commercial vehicles or recreational vehicles may be parked or kept within the Properties at any time. The Board of Directors shall have full authority, at its sole discretion, to make such other reasonable rules with respect to the use of parking spaces located on the Properties or it may elect, or to amend and vary any of the requirements set forth above.

ARTICLE V

COVENANT FOR ASSESSMENTS OF ASSOCIATION

Section 1. *Creation of the Lien and Personal Obligation of Assessments.* Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association and (2) special assessments of the Association as provided in Section 4 of Article V; such assessments to be established and collected as hereinafter provided. All such assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

Section 2. *Purpose of Assessments.* The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Properties and in particular for the acquisition, improvement, maintenance and operation of the Common Area and the

easements appurtenant thereto; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; payment of taxes, insurance and governmental assessments on or to the Common Area; and exterior maintenance of and, if the Association elects to carry insurance as provided in Section 1 of Article VII hereof, insurance on the Buildings, including but not limited to the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision; the provision of a reserve fund for replacement; the employment of attorneys, accountants and other professionals to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all private streets and roadways in the Properties.

Section 3. Maximum Annual Assessment. Until December 31, 1986, the maximum annual assessment levied by the Association for each Lot shall be Four Hundred Twenty and no/100 Dollars (\$420.00).

(a) From and after December 31, 1986, the maximum annual assessment may be increased by the Board of Directors of the Association each year, without a vote of the membership, not more than 15% above the maximum assessment for the previous year; provided, however, that any part of such permitted 15% increase which is not assessed for any year may accumulate and be carried over to succeeding years so long as the increased assessment does not exceed a figure 20% above the actual assessment for the immediately preceding year.

(b) From and after December 31, 1986, the maximum annual assessment may be increased above the increase allowed in Subsection (a) of this Section 3 by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (ii) the cost of any maintenance on or replacement of the exterior of any improvements within the Lots; (iii) the cost of paying special governmental assessments; or (iv) any other cost or expense, provided payment of any such assessment is approved by two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article V shall be sent to all members not less than seven (7) days nor more than sixty (60) days in advance of the meeting. The quorum required for any action authorized by Sections 3 and 4 of this Article V shall be as follows: At the first meeting called, as provided in Sections 3 and 4 of this Article III, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall

constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth herein, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each Townhome (in the case of utility charges), the replacement value (in the case of insurance premiums) or assessed value of each Townhome, or some other reasonable criteria; provided, however, that so long as any Lot owned by Declarant is unoccupied as a residence, the rate of assessment for such Lots owned by Declarant shall be fifty percent (50%) of the rate for other Lots. The annual assessment shall be collected on a monthly basis in advance, one-twelfth (1/12) of said assessment to be collected on the first day of each month.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments levied by the Association provided for herein shall commence as to all Lots on the first day of the month following the date of recordation of the deed conveying the Common Area to the Association in the Office of the Register of Deeds of Wake County, North Carolina. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and, unless otherwise determined by the Board, annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the president or the treasurer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid as to any purchaser or mortgagee of a Lot who relies thereon.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. In the event that any assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board of Directors of the Association may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of 12% per annum or the maximum lawful rate, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his property to collect said assessment, and interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust

would be brought, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this section 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 power to bid in any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

Notwithstanding anything hereinbefore stated in this Section 8, during any period in which an Owner shall be in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association, and the right to the use of the Common Area or any other services or facilities which is provided by the Association (except the right of access to the Owner's lot and the right of access to utility service for such Lot) may be suspended until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board of Directors after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board of Directors after giving such Owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing; determination of the violation and the time of suspension shall be made by a majority vote of the Board of Directors.

Section 9. Subordination of the Lien to Institutional Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Institutional Mortgage on any Lot or similar security interest owned or held by an Institutional Lender, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Institutional Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Institutional Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following parts of the Properties shall be exempt from assessment liens of the Association: (i) the Common Area; and (ii) any part of the Properties, if any, dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Properties to any public authority).

Section 11. Declarant's Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own.

Section 12. Reserve Funds. From and after the recording of this Declaration, the Association shall establish and maintain a

reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Properties by allocation and payment monthly to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board of Directors. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any and all facilities owned by the Association, for maintenance or replacement of the exterior of improvements within the Lots, and for such other purposes as may be determined by the Board of Directors.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article VI, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. In the event that any portion of any structure as originally constructed by Declarant, including any party wall or fence, shall protrude over an adjoining Lot, such structure, party wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot, and the Owners shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event that there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements in conformance with the original structure, party wall or fence constructed by Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in proportion to their ownership.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or wilful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. *Right to Contribution Runs With Land.* The right of any Owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. *Easement and Right of Entry for Repair, Maintenance, and Reconstruction.* Every Owner shall have an easement and right of entry upon the lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 7. *Certification With Respect to Contribution.* If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article request of the adjoining owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 8. *Arbitration.* In the event of any dispute arising concerning a party wall, or under the provisions of this Article VI, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party. All arbitrators chosen shall either be architects, engineers, general contractors or attorneys licensed to do business as such in North Carolina.

ARTICLE VII

INSURANCE AND RECONSTRUCTION

Section 1. *Association Insurance.* The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) *Casualty Insurance.* The Association shall procure and maintain one or more insurance policies insuring improvements constructed on the Common Area, and, at its election, may procure and maintain one or more insurance policies insuring the Townhomes and other improvements constructed on the Lots, for the full replacement cost thereof, exclusive of excavation and foundation costs, against at least the following risks:

(i) Loss or damage from all hazards and risks normally covered by a standard "All-Risk" policy, including fire and lightning; and

(ii) Such other risks as from time to time shall customarily be covered with respect to buildings similar in construction, location and use to the improve-

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ments situated on the Properties, specifically including without limitation vandalism, malicious mischief, windstorm and water or flood (if available) damage.

Such policy or policies shall include an annual review clause, and shall be without deduction or allowance for depreciation, and shall be subject to such deductible amounts, not in excess of One Thousand Dollars (\$1,000.00), as the Board of Directors shall determine. Such policy or policies shall be procured and maintained by the Association for the benefit of the Association, Declarant, Owners and their respective mortgagees, all as their interests may appear, and shall provide for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Lots, if any.

Such policy or policies shall provide that all proceeds payable as the result of casualty losses shall be paid to the Association, as Trustee for the Owners and their mortgagees, as follows:

(iii) In the case of proceeds payable as the result of casualty loss to the Common Area or any improvement thereon, an undivided equal share for each Lot subject, however, to the Association's rights and obligations to apply such proceeds to rebuild, repair and restore the same; and

(iv) In the case of proceeds payable as the result of casualty loss to any Lot or improvements thereon, for the Owners of such damaged Lots, or for their mortgagees as the applicable mortgage instrument shall provide, in proportion to the reasonable cost of repairing the damage to each such Lot or improvements thereon, as determined by the Board of Directors.

(b) *Liability Insurance.* The Association shall procure and maintain, or cause to be maintained, one or more policies of public liability insurance insuring the Association, Declarant, and the Owners and their immediate families and any occupant of any Lot, to the extent of not less than One Million Dollars (\$1,000,000.00) single limit coverage for liability as a result of bodily injury, including death resulting therefrom, and/or damage to property, including loss of use thereof, incurring upon, in or about, or arising from or relating to, the Properties or any portion thereof. Such policy or policies shall contain cross-liability endorsements to cover liabilities of the Owners as a group to any Owner.

(c) *Fidelity Insurance.* The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Such fidelity insurance coverage shall, at least:

(i) name the Association as an obligee thereunder;

(ii) be written in an amount equal to at least fifty percent (50%) of the estimated annual operating expenses of the Association, specifically including reserves; and

(iii) contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) *Other Insurance.* The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain such other insurance coverages as the Board of Directors shall determine from time to time to be desirable, specifically including without limitation directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds.

(e) *Provisions of All Policies.* The following terms shall govern all policies and insurance coverage of the Association:

(i) Premiums upon all insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies, and shall be deemed expenses of the Association for all purposes.

(ii) All insurance policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A-X or better in Best's Insurance Guide, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in Best's Insurance Guide.

(iii) The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed Agent for each Owner and any holder of a mortgage on any Lot or any lien upon a Lot to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims.

(iv) In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by Owners or their mortgagees as permitted in Section 2 of this Article VII, and any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements hereof shall exclude such Owner's or mortgagee's policy from consideration.

(v) All policies shall provide that such policies may not be cancelled nor substantially modified without at least thirty (30) days' prior written notice to any and all insureds named thereon, specifically including without limitation any and all mortgagees of the Lots.

(vi) All policies of insurance shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Association, its Board of Directors, the Owners and their respective agents, employees, invitees or mortgagees, and of any defenses based upon invalidity arising from the acts of the insured.

(vii) In the event a mortgagee endorsement to any policy or policies has been issued as to any Lot, such mortgagee shall have no right to determine or participate in the determination as to whether or not any damaged property which is part of the Properties shall be reconstructed or repaired, such determination to be made solely in accordance with the provisions of Section 3 of this Article VII, notwithstanding any provision or requirement contained in any mortgage instrument or deed of trust.

(viii) Duplicate originals of all such policies shall be furnished to all Owners and their respective mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and their respective mortgagees attesting the fact that such policies and such insurance are in force and effect. Furthermore, the Association shall furnish to the Owners and their respective mortgagees evidence that premiums for such insurance have been paid on an annual basis.

Section 2. Owners' Insurance. Any Owner and any holder of a mortgage with respect to any Lot may obtain such additional insurance with respect to a Lot, totally at the expense of such Owner or mortgagee, as is desired. Any such insurance shall either:

(i) Be written by the same insurer which carries the casualty insurance purchased by the Association pursuant to the provisions of Section 1(a) hereof; or

(ii) Shall provide that such policy or policies shall be without contribution with respect to the policy or policies of casualty insurance maintained by the Association. Any such Owner's or mortgagee's policy also shall contain waiver of subrogation provisions identical to those contained in Section 1(e)(vi) hereof.

If the Association elects to obtain a casualty insurance policy on the Townhomes and other improvements constructed on the Lots and gives each Owner written notice of such election, Declarant recommends that each Owner obtain a "Homeowner's Policy" or its equivalent to insure against loss or damage to personal property used in or incidental to occupancy of the Lot and improvements thereon, additional leasing (motel) expenses, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include the equivalent of a "condominium unit Owner's endorsement" covering losses to improvements and betterments to the Lot made or acquired at the expense of Owner.

If the Association does not elect to procure and maintain policies of casualty insurance upon the Townhomes and other improvements constructed on the Lots, then each Owner shall procure and maintain, at his expense, one or more insurance policies for the full replacement cost of the Townhome and other improvements located on his Lot, exclusive of excavation and foundation costs, against the risks, in the amounts, and with companies conforming to the standards and requirements prescribed in Section 1(a) and (e) hereof, naming the Owner and any mortgagee as insureds and providing for payment of the proceeds thereof to the Association for application pursuant to Section 4(iii) hereof.

Duplicate copies of any such policy or policies under this Section 2 procured by an Owner or his mortgagee shall be furnished to the Association within ten (10) days of the effective coverage date of such insurance. If any Owner who is required by this Section 2 to obtain any policy of insurance fails to provide the duplicate copy of such policy to the Association as required above, then the Association shall have the right to obtain the required insurance on behalf of such Owner. Any expense incurred by the Association in obtaining such insurance shall be the personal obligation of such Owner, and shall be a lien on his Lot having all of the rights and priorities of a lien for unpaid assessments set forth in Article IV of this Declaration.

Section 3. Responsibility for Reconstruction or Repair. If any portion of the Properties shall be damaged by perils covered by the casualty insurance maintained in accordance with Section 1(a) hereof, the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and such reconstruction or repair shall be substantially in accordance with the plans and specifications for the development of the Properties. If, however, such damage renders two-thirds (2/3) or more of the then-existing Townhomes on the Properties untenable, the Association may, upon the affirmative vote of seventy-five percent (75%) of the votes of the Members and upon the written approval of the holders of seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots, elect not to reconstruct or repair such damaged Townhomes. A meeting shall be called within ninety (90) days after the occurrence of such casualty rendering more than two-thirds (2/3) of the Townhomes on the Properties untenable, or, if by such date the casualty insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Townhomes were damaged, or to their mortgagees as the individual mortgage instruments may provide, in proportion to the reasonable cost of repairing damage to such Townhomes; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Properties.

In the event that the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Properties by fire or other casualty, or in the event such damage or destruction is caused by any casualty not insured against, or in the event that insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements or parts of the Common Area shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within a Lot shall be accomplished promptly by the Owner of the affected Lot at his expense. In the event the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction and the expense of such performance shall be a lien on the Lot having all of the priorities provided for in this Declaration. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for same shall have all the priorities provided for in this Declaration.

Section 4. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Properties, the following provisions shall govern and apply:

(i) Immediately after a casualty which causes damage to any portion of the Properties, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) one or more special assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destructions to Townhomes or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to Common Area or improvements thereon) in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of the members of the Association voting at a meeting duly called for such purpose.

(iii) The proceeds of the casualty insurance referred to in Section 1(a) hereof, the sums deposited with the Association from collections of special assessments against Owners on account of such casualty or proceeds of authorized loans, and the proceeds of casualty policies obtained by Owners pursuant to Section 2 hereof shall constitute a construction fund which shall be disbursed to the Board of Directors and be applied by the Board of Directors to the payment of the cost of reconstruction and repair of the Properties from time to time as the work progresses, but not more frequently than once in any calendar month. The Board shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work who shall be selected by the Association, setting forth: (1) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work; and (3) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Board of Directors after the payment of the sum so required. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair

shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board of Directors.

ARTICLE VIII

EXTERIOR MAINTENANCE

The Owner of each Lot in the Project shall provide necessary and reasonable exterior maintenance upon each Lot in the Project as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, garden walls and fences, trees, shrubs, grass, walks, glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware, and floor surfaces of decks, balconies or patios, painting of decks, balconies and patios, lawn care and landscaping services and other exterior improvements. No Owner may paint any portion of his Townhome a different color than its original color without the prior written consent of the Board of Directors, which approval may be withheld in the sole discretion of the Association. Each Lot shall be maintained in good condition and repair at all times.

Notwithstanding the foregoing, the Association shall, at its election, have the right from time to time to perform, or cause to be performed, all or any portion of such exterior maintenance so long as it does so in a reasonable and good and workmanlike manner.

ARTICLE IX

MAINTENANCE OF PROPERTY

Each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner reasonably satisfactory to the Board of Directors, the Board of Directors shall give written notice to such Owner and, if said notice is not complied with within twenty (20) days, then the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents, contractors, and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable as under the provisions of Article III, Section 8, hereof.

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be constructed, erected or maintained on, or removed from, the Properties, nor shall any exterior addition to, change or alteration therein or reconstruction thereof be made until the plans and specifications prepared and signed by a licensed architect or engineer showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors of the Association. The Association shall have the right to charge a reasonable fee, not to exceed \$25.00, for receiving each such application. In the event said Board or its designated committee shall fail to approve, approve as noted or as qualified, or disapprove such plans and specifications submitted to it in accordance herewith within sixty (60) days, the approval required in this Article X shall be deemed granted and no further approvals or consent shall be required before the commencement of construction on such improvements; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data, misstatements, or in any way fail to present accurate information upon which said Boards or their designated committees can base a decision.

The said Board or its designated committee shall have the right, at its election, to enter upon any Lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Nothing contained in the Article X shall be construed to permit interference with the initial development of the Declarant's Parcel by the Declarant.

ARTICLE XI

EASEMENTS

Section 1. *Construction, Settling and Overhangs.* Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. Every portion of a Lot and each Townhome constructed thereon and contributing to the support of an abutting Townhome shall be burdened with an easement of support for the benefit of such abutting Townhome. In the event a Building covering parts of two or more Lots is partially or totally destroyed, and then rebuilt, Owners of the Lots so affected agree that minor encroachment of parts of the adjacent Lots or Common Area either resulting from construction or consistent with encroachments which existed prior to such damage or destruction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. *Blanket Easement for Utilities.* There is hereby created a blanket easement upon, across, over and under all of the

Properties for installing, replacing, repairing, operating and maintaining all utilities, including but not limited to water, storm and sanitary sewers, gas, telephones and electricity, and a master television antenna system or cable television system to service the Properties. By virtue of this blanket easement, it shall be expressly permissible for the providing electrical or telephone company to erect and maintain any necessary poles and other necessary equipment on the Properties and to affix and maintain electrical or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of improvements within the Lots. An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets, driveways and other parts of the Common Area in the performance of their duties. Further, an easement is hereby reserved to Declarant and granted to the Association, and their officers, agents, employees, and to any management company selected by the Association to enter into or to cross over the Common Area. Anything to the contrary contained in this section notwithstanding, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Properties except as initially approved by Declarant or thereafter approved by Declarant or the Board of Directors. Should any utility furnishing a service covered by the blanket easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article XI shall in no way affect any other recorded easement on the Properties at the date hereof.

Section 3. Underground Electrical Services. Underground single phase electrical service shall be available to all Lots and, where appropriate, to improvements to be constructed on the Common Area. Metering equipment shall be located on the exterior surface of the walls of any improvement at a point to be designated by the providing utility company. The providing utility company shall have a ten foot (10') easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the Lots. For so long as such underground service is maintained, the electric service to each Lot and the Common Area shall be uniform and exclusively of the type known as single-phase, 120/240 volt, 60-cycle alternating current. Easements for underground service may be crossed by driveways, walkways, patios and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other pavings, other than crossing driveways, walkways, patios, or parking areas.

Section 4. Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Properties during such period of time as Declarant is engaged in any construction or improvement work on or within the Properties and shall further have an easement for the purpose of the storage of materials, vehicles, tools equipment, etc., which are being utilized in such construction. No Owner, his guests or invitees shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 5. Easement for Access. Without limiting the easement of enjoyment created under Article IV, Section 1, every Owner shall have, and is hereby granted, a non-exclusive easement

in and to all streets, driveways, walkways and parking areas, provided and designated for common use from time to time, in the Common Area, subject, however, to such reasonable rules and regulations as may be established for their use by the Association. Such easement shall continue for the term of this Declaration, shall be deemed appurtenant to each Owner's Lot, and shall be for the benefit of the Owner and his family, tenants, guests, and invitees.

In addition to and without limiting the foregoing, the Owner of every Lot that does not abut a public street shall have, and is hereby granted, a non-exclusive perpetual easement for reasonable vehicular and pedestrian access, ingress and egress over the Common Area to and from his Lot and to and from a public street. This general easement shall survive the expiration or earlier termination of this Declaration, shall be deemed appurtenant to each such Lot, shall inure to the benefit of each such Owner and his tenants, family, guests, invitees and agents, and shall continue as a burden running with the Common Area unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easement in one or more strips of land adequate for that purpose.

ARTICLE XII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No Townhome may be subdivided and each Townhome shall be used solely as a single family residence. No building or structure other than single-family Townhomes joined together by a common exterior roof shall be constructed on any Lot. No structure of a temporary character, trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of the Properties at any time. It is expressly understood and agreed, however, that Declarant's use of any Lot or any other part of the Properties as a Sales Office, Construction Office, Storage Area, Business Office, Model Unit or such other facility as in the sole opinion of Declarant is reasonably necessary, convenient or incidental to the construction or sale of Townhomes located the Lots during the time Declarant owns any Lot in the Properties shall not be considered a violation of this restriction.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to neighboring Owners or to residents of any part of Kildaire Farms Subdivision or which may endanger the health or safety of any Owner or any resident of the Properties.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except for dogs, cats and other small household pets, which pets may not be kept or bred for any commercial purpose and shall have such care and restraint that they will not be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than one household pet may be kept on any Lot without written permission of the Board of Directors. No pets may be permitted to run loose upon the Common Area, and any Owner who causes any pet to be brought or kept on his Lot shall indemnify and hold harmless the Association for any

loss, damage or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission therefor.

Section 4. Alterations and Attachments by Owner. No Owner shall make structural alterations or modifications to the improvements on his Lot or to any of the Common Area, including the erection of awnings, the placement of any reflective or other material in the windows of his Townhome (other than draperies), the installation of aluminum (or similar material) storm doors in any Townhome or other exterior attachments without the written approval described in Article X hereof. Approval shall not be given to any proposed alterations, decorations or modifications which, in the reasonable judgment of the Board of Directors, could jeopardize or impair the soundness, safety or appearance of the Properties.

Section 5. Use of Common Area. The Common Area shall not be used for storage of supplies, personal property or trash or refuse of any kind except in Common Area trash receptacles placed at the discretion of the Board of Directors, nor shall the Common Area be used in any way for the drying, shaking or airing of clothing or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and other facilities in the Common Area shall not be obstructed in any way nor shall they be used for other than their intended purposes. In general, no activity shall be carried on nor condition maintained by any Owner either on his Lot or upon the Common Area which despoils the appearance of the Properties.

Section 6. Signs. Except with the express permission of the Association, no signs of any kind (except one sign per Lot of not more than five square feet containing the words "for rent" or "for sale") shall be displayed to the public view on any Lot or on the Common Area except signs used by Declarant or its agent to advertise the Properties during the construction and sales period.

Section 7. Clotheslines, Trash Cans, Etc. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash and garbage shall be regularly removed from each Lot, and shall not be allowed to accumulate therein.

Section 8. Gardening and Fencing in Common Area. No planting or gardening shall be done (except within individual Lots), and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved pursuant to Article X hereof. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the benefit of all Members of the Association, and is necessary for the protection of all Owners.

Section 9. Antennas. No exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Properties nor upon any structure situated upon the Properties other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 10. Rules and Regulations. Reasonable rules and regulations governing the use of the Properties may be made and

amended from time to time by the Board of Directors; provided, however, that all such rules and regulations and amendments thereto shall be approved by a majority vote of the Owners before such shall become effective. Copies of all such regulations and amendments thereto shall be furnished by the Association to all members upon request.

Section 11. Wells and Septic Tanks. No well or septic tank shall be drilled or installed on any Lot.

Section 12. Excavation. No Owner of a Lot shall excavate or extract earth from any Lot for any reason other than repair or maintenance reasons. No elevation changes in any Lot shall be allowed which materially affect the surface grade of surrounding Lots or diminish the lateral support of any adjoining or surrounding Lot.

Section 13. Decks, Screen Doors, Windows. Maintenance, upkeep and repair of any floor surfaces of decks or patios, screens and screen doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the individual Owner and not in any manner the responsibility of the Association. Any action necessary or appropriate to the proper maintenance and upkeep of the Common Area and facilities, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 14. Pipes, Wires, Etc. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or work that will impair the structural soundness or integrity of other improvements or impair any easement, nor do any act or allow any condition to exist which will adversely affect any other Lot or its Owners.

ARTICLE XIII

RENTAL OF TOWNHOMES BY OWNERS

Townhomes shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as any rental in which the occupants of the townhome occupy the same on a rental basis for periods of less than thirty (30) days or are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing, the Owners, including Declarant, shall have the absolute right to lease or rent the same subject to the covenants and restrictions contained in this Declaration, the Kildaire Farms Declaration, applicable zoning ordinances and regulations and the Bylaws.

ARTICLE XIV

VOLUNTARY CONVEYANCE OF LOT

The lien for assessments of the Association created in Article V, Section 1, shall not be affected by any voluntary conveyance of a Lot, and shall remain a continuing charge on the land and a continuing lien which may be foreclosed as provided in Article V, Section 8 hereof. Any grantee in a voluntary con-

veyance shall be entitled to a statement from the Board of Directors, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

ARTICLE XV

AMENDMENT OF DECLARATION

Section 1. General. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds of Wake County, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless an amendment approving the termination of said covenants and restrictions, executed and recorded in accordance with the procedures set out in this Article XV, has been recorded in the Office of the Register of Deeds of Wake County, North Carolina, at least three years prior to the end of such initial twenty-year period or any such successive ten-(10) year period. This Declaration may be amended upon the filing for record in the Office of the Register of Deeds of Wake County, North Carolina, of an instrument in writing which sets forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by: (i) during the period ending twenty (20) years from the date this Declaration is recorded, Owners holding not less than ninety percent (90%) of the votes of the Members of the Association, and holders of not less than ninety percent (90%) of the Institutional Mortgages then in force with respect to the Lots; and (ii) thereafter Owners holding not less than seventy-five percent (75%) of the votes of the Members of the Association and holders of not less than seventy-five percent (75%) of the Institutional Mortgages then in force with respect to the Lots. Any amendment hereto must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached schedules and exhibits are recorded and must contain an affidavit by the President of the Association or an officer of Declarant, as the case may be, that a copy of the amendment has been mailed by certified mail to all Owners and all mortgagees having a bona fide lien of record against any Lot. Any such amendment shall be recorded and indexed in the name of the Association and each and every Owner.

Section 2. Amendment of Declaration Without Approval of Owners. The Declarant, without the consent or Regulation of any approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such Lots and improvements or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corpora-

tion or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Association or the Federal National Mortgage Association requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

No amendment made pursuant to this Section shall be effective until duly recorded in the Wake County Registry.

Section 3. *Amendment to Achieve Tax-Exempt Status.* The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Properties, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 1. *Directors Appointed by Declarant.* The initial Board of Directors of the Association shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of Directors of the Association and exercise all powers and duties granted to the Board of Directors in the Bylaws. Said Directors are further specifically authorized to fix the annual assessments for periods through December 31, 1986 and enter into a Management Agreement for the Association upon the terms, provisions, conditions and limitations as are herein and in the Bylaws provided for and upon such other terms and conditions as the Directors may deem to be in the best interests of the Association. (The Bylaws set forth additional rights of Declarant to elect directors after the first annual meeting.)

Section 2. *Notices of Mortgages.* Any Owner who mortgages his or her Lot or his interest therein shall notify the Association, in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgages. The Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 3. *Copies of Notices to Mortgage Lenders.* Upon written request to the Board of Directors of the Association, the holder of any duly recorded mortgage on any Lot or interest therein shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner or Owners whose Lot or interest therein is subject to such mortgage.

Section 4. *Covenants Running with the Land.* Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits

and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 5. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential townhouse community of the highest quality. Any Owner, the Association, Declarant or any Institutional Lender may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.

Whenever there shall have been built within the Properties any structure which is in violation of this Declaration, the Association, or its designated agents, may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Properties) enter upon the property where such violation exists, and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a special assessment levied by the Association against such violating Owner and such Owner's Lot, shall become a personal obligation of such Owner and shall become a lien upon such Lot enforceable as under the provisions of Article V, Section 8, hereof.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

Section 6. Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 8. Time Limits. IF any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of Margaret Clayton Beacham, Thomas Breckenridge Henson, and William Thompson Graves, Jr.

Section 9. Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or delegated to them or any of them by or pursuant to this Declaration.

Section 10. First Mortgagees: Right to Examine Association Books. The holders of first mortgages or first Deeds of Trust on Lots shall have the right to examine the books and records of the Association.

Section 11. Loans to Association. Declarant may, at its discretion, loan funds to the Association from time to time as required, which loans shall be repayable with interest at eight percent (8%) per annum as funds are available, but in no event more than one (1) year from the date of advancement of funds.

Section 12. Failure of Association to Pay Taxes and Special Assessments on Common Area. In the event that the Association shall, contrary to its obligation to do so, fail to pay the ad valorem taxes or any special governmental assessments on the Common Area on or before expiration of one hundred eighty (180) days from and after the date on which the same shall become delinquent, then and in such event, said taxes or assessments, together with any interest and penalties thereon shall be and become a lien, on a pro rata basis, upon the Lots covered hereby. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments and public improvements.

Section 13. Conveyance of Property to Association. It is understood and agreed that Declarant, its successors and assigns, shall convey the Common Area to the Association free and clear of financial liens and encumbrances within sixty (60) days after the time the first Lot is conveyed to a purchaser other than Declarant. To the extent that any work or construction remains to be done with respect to the Common Area, then and in such event Declarant shall have theretofore delivered its contract and undertaking to complete such work or construction, lien-free, to the Association as the case may be.

Section 14. Declarant's Reservation of Rights. Declarant shall have, and may reserve in any conveyance of the Common Area, a non-exclusive easement in and to all streets, driveways, walkways and parking areas, provided and designated for common use from time to time, in the Common Area, subject, however, to such reasonable rules and regulations as may be established for their use by the Association. Declarant shall also have the right and easement to enter upon the Properties for all reasonable purposes relating to the construction, protection, sale, repair, inspection and renovation of any improvements constructed thereon. The foregoing rights and easements shall continue for the term of

this Declaration and shall be for the benefit of Declarant, its successors and assigns, and their agents and employees.

Declarant's easements shall not be affected by any amendment of this Declaration, unless expressly approved in a written and recorded document by Declarant, its successors or assigns.

Section 15. *Management Agreements.* The Association shall have the right to enter into management agreements for the Properties. A copy of all such agreements shall be made available to every Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled, with or without cause prior to the expiration of said agreement, by an affirmative vote of sixty percent (60%) of the votes of the Owners.

Section 16. *Emergencies.* In the event of any emergency originating in or threatening any Lot, the managing agent or his representative or any other person designated by the Board may enter the Lot or improvements therein immediately, whether the Owner is present or not, and in such event, the Association reserves the right to enter such Lot or improvements by force without any liability to the Owner for any damage caused by such forcible entry.

Section 17. *Conflicts.* - In the event there shall be any irreconcilable conflicts between either this Declaration or the Bylaws and the Kildaire Farms Declaration or the Bylaws of the KF Association, the provisions of the Kildaire Farms Declaration and the Bylaws of the KF Association shall control. In the event of any irreconcilable conflict between this Declaration and the Bylaws, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

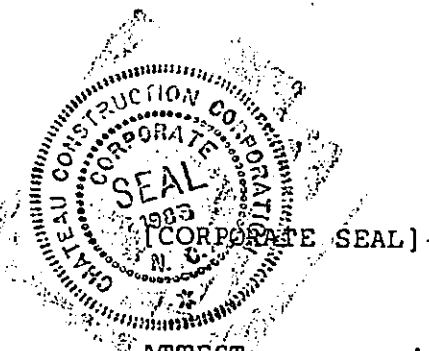
Section 18. *Headings.* The heading to each Article and Section hereof is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

IN WITNESS WHEREOF, Lake Pine Associates, has caused this Declaration to be executed this the day and year first above written.

LAKE PINE ASSOCIATES, a North Carolina limited partnership

By: CHATEAU CONSTRUCTION CORPORATION,
general partner

By: Eugene P. Sak
President



ATTEST:

James H. Padma
Secretary

STATE OF NORTH CAROLINA
COUNTY OF WAKE

This 14th day of May, 1986, personally came before me EUGENE R. HAHN, who being by me duly sworn, says that he is the President of CHATEAU CONSTRUCTION CORPORATION, a general partner of LAKE PINE ASSOCIATES, a North Carolina limited partnership, and that the seal affixed to the foregoing instrument in writing is the corporate seal of the corporation, and that said writing was signed and sealed by him, in behalf of said corporation, by its authority duly given. And the said EUGENE R. HAHN acknowledged the said writing to be the act and deed of said corporation.

Arlene F. Livengood
Notary Public

My commission expires:

ARLENE F. LIVENGOOD
NOTARY PUBLIC
WAKE COUNTY, N. C.
My Commission Expires 9-30-87

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Arlene F. Livengood

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.

KENNETH C. WILKINS, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds

EXHIBIT A

BEGINNING at a point in the centerline of Lake Pine Road, a 70-foot right-of-way, said Beginning point being located 1,011.29 feet North 13 deg. 58 min. 08 sec. East from the intersection of the centerline of Cork Harbour Drive and Lake Pine Drive; runs thence North 06 deg. 05 min. 44 sec. East 429.47 feet along the centerline of Lake Pine Road to a point; runs thence leaving the centerline of Lake Pine Road and along the southern line of Pod 5 of Parcel BB of the Kildaire Farms Subdivision North 88 deg. 35 min. 44 sec. East 35.30 feet to a point, North 88 deg. 35 min. 44 sec. East 559.70 feet to a point and South 69 deg. 51 min. 59 sec. East 363.78 feet to a point in the high water line of a future lake; runs thence with the high water line of a future lake the following courses and distances:

South 15 deg. 29 min. 47 sec. West 65.47 feet to a point; thence
South 03 deg. 00 min. 46 sec. West 108.44 feet to a point; thence
South 04 deg. 41 min. 09 sec. West 48.12 feet to a point; thence
South 17 deg. 18 min. 02 sec. West 37.67 feet to a point; thence
South 24 deg. 57 min. 46 sec. West 50.30 feet to a point; thence
South 19 deg. 41 min. 00 sec. West 25.67 feet to a point; thence
South 09 deg. 56 min. 17 sec. West 233.46 feet to a point; thence
South 06 deg. 32 min. 12 sec. East 37.98 feet to a point; thence
South 06 deg. 18 min. 06 sec. West 32.23 feet to a point; thence
South 06 deg. 09 min. 07 sec. West 33.01 feet to a point; thence
South 24 deg. 55 min. 18 sec. East 42.91 feet to a point; thence
South 51 deg. 22 min. 20 sec. East 55.10 feet to a point; thence
South 41 deg. 38 min. 01 sec. East 28.40 feet to a point; thence
South 14 deg. 16 min. 21 sec. East 23.12 feet to a point; thence
South 14 deg. 16 min. 06 sec. West 47.05 feet to a point; thence
South 54 deg. 43 min. 16 sec. West 35.39 feet to a point; thence
South 83 deg. 39 min. 35 sec. West 32.04 feet to a point; thence
North 72 deg. 39 min. 48 sec. West 38.91 feet to a point; thence
North 52 deg. 04 min. 28 sec. West 136.54 feet to a point; thence
North 60 deg. 27 min. 40 sec. West 101.66 feet to a point; thence
North 67 deg. 16 min. 36 sec. West 133.81 feet to a point; thence
North 50 deg. 32 min. 35 sec. West 66.18 feet to a point; thence
North 60 deg. 44 min. 35 sec. West 48.66 feet to a point; thence
North 83 deg. 45 min. 20 sec. West 142.75 feet to a point; thence
North 58 deg. 51 min. 05 sec. West 62.69 feet to a point; thence
North 75 deg. 24 min. 12 sec. West 38.99 feet to a point; thence
North 55 deg. 53 min. 37 sec. West 37.50 feet to a point; thence
North 41 deg. 22 min. 28 sec. West 50.55 feet to a point; thence
North 24 deg. 54 min. 17 sec. West 66.74 feet to a point; thence
North 53 deg. 07 min. 48 sec. West 16.34 feet to a point; runs
thence North 06 deg. 36 min. 38 sec. East 37.05 feet to a point;
runs thence North 67 deg. 41 min. 34 sec. West 107.19 feet to a
point in the centerline of Lake Pine Road, the POINT AND PLACE OF
BEGINNING, being all of Parcel BB - Pod 6 and containing 14.94417
acres as shown on that plat of actual survey entitled
"Harlon/Kildaire Farms Parcel 'BB' Pod 6", dated November 8,
1984, and prepared by James S. Murphy, Registered Land Surveyor.

(A231)

EXHIBIT B

PHASE I

BEGINNING at a point in the eastern right of way line of Lake Pine Road having North Carolina Grid Coordinates N=732,922.357 and E=2,058,706.623, thence from the POINT AND PLACE OF BEGINNING North 88 deg. 35 min. 44 sec. East 131.99 feet to a point; thence South 08 deg. 36 min. 00 sec. East 141.75 feet to a point in the northern right of way line of Chimney Rise Drive; thence along and with the northern right of way line of Chimney Rise Drive the following three courses and distances: North 69 deg. 34 min. 39 sec. West 82.38 feet to a point; thence North 83 deg. 54 min. 16 sec. West 62.00 feet to a point; thence in a westerly direction along a curve to the right having a radius of 25.00 feet an arc distance of 39.27 feet a chord of 35.36 feet and a chord bearing of North 38 deg. 54 min. 16 sec. West to a point in the eastern right of way line of Lake Pine Road; thence along and with the eastern right of way line of Lake Pine Road North 06 deg. 05 min. 44 sec. East 74.50 feet to the POINT AND PLACE OF BEGINNING and being all of Phase I - Chimney Rise Townhomes - Kildaire Farms Subdivision as shown on a survey prepared by Black & Veatch dated November 11, 1985.

A363

BYLAWS
OF
CHIMNEY RISE HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1

Definitions

Unless the context clearly indicates otherwise, any capitalized term not otherwise defined in these Bylaws shall have the same definition as in the Declaration of Covenants, Conditions and Restrictions for Chimney Rise Townhomes dated May 14, 1986 and recorded in Book 3729 at Page 543 in the office of the Register of Deeds for Wake County, North Carolina ("Declaration").

ARTICLE 2

Purposes and Authority

Section 2.1. *Purpose.* Chimney Rise Homeowners Association, Inc. ("Association") was formed solely for the purpose of performing the obligations and exercising the rights of the Association set forth in the Declaration. The Association shall not engage in any other activities.

Section 2.2 *Authority.* The Association, its Board of Directors, its officers and its members, shall at all times act in conformity with the Declaration, the Articles of Incorporation of the Association, these Bylaws and the Rules and Regulations adopted by the Board of Directors pursuant to Article 5, Section 5.14(d), of these Bylaws. In carrying out its purpose, the Association shall have the authority and power to enforce the provisions of these Bylaws and the Declaration, to levy and to collect assessments in the manner hereinafter and therein provided, and to adopt, promulgate and enforce such Rules and Regulations governing the use of the Townhomes on the Lots and Common Areas as its Board of Directors may deem to be in its best interest.

ARTICLE 3

Offices—Seal—Fiscal Year

Section 3.1 *Principal Office—Registered Office.* The initial registered office of the Association shall be located at 101 Brady Court, Cary, North Carolina 27511. The Association may change the registered office as it deems it necessary.

Section 3.2 *Other Offices.* The Association may have other offices at such other places within the State of North Carolina as the Board of Directors may from time to time determine or as the affairs of the Association may require.

Section 3.3 *Seal.* The seal of the Association shall contain the name of the Association, the word "Seal," year of incorporation and such other words and figures as desired by the Board of Directors. When obtained, said seal shall be impressed in the space below:

(SEAL)

Section 3.4 *Fiscal Year.* The fiscal year of the Association shall be the calendar year, except that in the initial year of operation of the Association, the fiscal year shall commence with the closing of the sale of the first Lot with a Townhouse located thereon and shall end on December 31 of that year.

ARTICLE 4

Membership and Meetings

Section 4.1 *Qualification.* Membership in the Association shall be confined to and consist of Owners. Membership shall be appurtenant to and inseparable from Lot ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more Lots. The date of recordation of the conveyance in the Office of the Register of Deeds of

Wake County, North Carolina, of the Lot in question shall govern the date of ownership of each particular Lot. In the case of death, however, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 *Place of Meetings.* All meetings of the membership shall be held at the registered office of the Association or at such other place as may be designated from time to time by the Board and included in the notice of meeting, provided that all meetings shall be held within Wake County, North Carolina.

Section 4.3 *Annual Meetings.* The first annual meeting of the Members shall be held on the third Saturday in March, 1988 provided, however, elections for the Board of Directors shall not be held until the time the Members, other than the Declarant, are entitled to elect not less than one-third (1/3) of the members of the Board of Directors as provided in Section 5.2 of these Bylaws. Thereafter, the annual meetings of the members shall be held on the third Saturday in March of each year, at 10:00 a.m., Eastern Standard Time. At such meetings the Members shall transact such business as may properly come before them, including the election of the Board of Directors as provided by Section 5.2 of the Bylaws.

Section 4.4 *Substitute Annual Meetings.* If the annual meeting shall not be held on the day designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4.5 *Special Meetings.* Special meetings of the Members may be called at any time by the President, Secretary or Board of Directors of the Association, or by any Member pursuant

to the written request of the holders of not less than twenty-five percent (25%) of the Lots.

Section 4.6. *Notice of Meetings—Waiver.* Written or printed notice stating the time and place of the meeting shall be delivered not less than seven (7) nor more than sixty (60) days before the date of any membership meeting, either personally or by mail, by or at the direction of the President, the Secretary or other person calling the meeting, to each Member entitled to vote at such meeting. If delivered personally, receipt of such notice shall be signed by the Member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, postage prepaid and addressed to the Member at his or her post office address as it appears on the records of the Association as of the date of mailing such notice.

Notice given to any one tenant-in-common or tenant-by-entirety of a Lot shall be deemed notice to all co-owners of such Lot.

In the case of a special meeting, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called; but, in the case of an annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted thereat unless such a statement is required by the provisions of Chapter 55A of the North Carolina General Statutes.

Any Member may waive the necessity of formal notice to him by signing a written waiver either before or after the meeting. Upon execution of such a waiver, a Member shall not be entitled thereafter to object to the holding of the meeting or matters being passed upon at said meeting because of lack of notice thereof.

Section 4.7 *Quorum*. Except as otherwise provided in these Bylaws or the Declaration, the presence in person or by proxy of ten percent (10%) of the total number of Members entitled to vote shall constitute a quorum at all meetings of the Members. If any meeting cannot be organized because a quorum has not attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended (wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these Bylaws or the Declaration), the Members who are present, either in person or by proxy, may adjourn the meeting from time to time without notice other than the announcement at the meeting, until a quorum, or the required percentage of attendance if greater than a quorum, is present, so long as said adjournment is for less than sixty (60) days.

The Members at any 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, unless a higher percentage of votes is required.

Section 4.8 *Voting Rights*. The total number of votes of all Members shall equal the total number of Lots in the Properties.

The vote of the Owners of a Lot owned by more than one person or by a corporation or other entity shall be cast by the one individual named in a certificate signed by all of the Owners of the Lot and filed with the Secretary of the Association, and such certificate shall be valid until revoked by subsequent certificate. If such a certificate is not on file, the vote of such Owners shall not be considered for any purpose.

The owners of a life estate in a Lot shall be entitled to cast the vote appurtenant to such Lot as against the owners of a reversion or remainder interest. The above provisions con-

cerning one voter shall also apply to those owning joint or multiple life estates in any particular Lot.

Section 4.9 *Proxies*. Members may vote either in person or by agents duly authorized by a written proxy executed by a Member or by his duly authorized attorney-in-fact. A proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specified therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after ten (10) years from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place.

Section 4.10 *Majority Vote*. The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a higher percentage vote is required by the Declaration, the Articles of Incorporation of the Association, or these Bylaws.

Section 4.11 *Actions without Meeting*. Any action which may be taken at a meeting of the membership may be taken without a meeting if a consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all Members entitled to vote and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Section 4.12 *Order of Business*. So far as practical, the order of business at any meeting of members shall be:

- A. Calling of the roll and certifying of proxies;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading and disposal of any unapproved minutes;
- D. Election of Directors in the manner provided in Section 6 of these Bylaws.
- E. Reports of Officers;

- F. Reports of Committees;
- G. Unfinished business;
- H. New business; and
- I. Adjournment.

Section 4.13 *Voting by Members.* Voting on all matters except election of directors shall be by voice vote or by a show of hands unless ten percent (10%) of the votes represented at the meeting shall, prior to the voting on any matter, demand a ballot vote on that particular matter.

Section 4.14 *Voting Lists.* At least ten (10) days before each meeting of Members, the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereto, with the address of each such Member. This list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting.

ARTICLE 5

Board of Directors

Section 5.1 *General Powers.* The business and affairs of the Association shall be managed by the Board of Directors.

Section 5.2 *Number, Term and Qualification.* The initial Board of Directors will consist of the three persons whose names are set forth in the Articles of Incorporation of Chimney Rise Homeowners Association, Inc. The undertakings and contracts authorized by the initial Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Board of Directors

duly elected by the membership after the Declaration had been recorded, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association in accordance with the Declaration, these Bylaws and the Articles of Incorporation of the Association ("Townhome Documents").

From and after the date of the first annual membership meeting there shall be three directors, all of whom will be elected or appointed by the Declarant as provided herein.

Members other than the Declarant shall be entitled to elect not less than a majority of the members of the Board of Directors upon the earliest occurrence of any of the following:

(a) Five (5) years after the first sale of a Lot in Chimney Rise by the Declarant has been closed; or

(b) The last day of the first three hundred sixty-five (365) day period in which individuals or entities, other than Declarant, have on every day in that entire period owned at least seventy-five percent (75%) of the Lots in the Properties.

The Declarant, so long as it owns one or more Lots, shall retain the right to elect at least one (1) director. Each director so elected shall serve for a term of one (1) year or until his death, resignation, retirement, removal, or disqualification, or until his successor is elected and qualifies. Directors need not be members of the Association or residents of North Carolina, and each director shall be at least twenty-one years of age.

Section 5.3 *Nominations.* Nominations for election to the Board of Directors, other than those directors elected by Declarant as herein provided, shall be made by a Nominating Committee consisting of a Chairman, who shall be a member of the Board, and two members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at the annual meeting.

Section 5.4 *Election of Directors.* Election of Directors shall be conducted in the following manner:

(a) The Declarant shall, at the beginning of the election of the Board of Directors, select that number of the members of the Board of Directors which it shall be entitled to select in accordance with the terms of these Bylaws, and upon such selection, by written instrument presented to the meeting at which such election is held, said individuals so selected by the Declarant shall be considered directors of the Association, and shall thenceforth perform the offices and duties of such Directors until their successors shall have been elected in accordance with the provisions of these Bylaws.

(b) All members of the Board of Directors whom the Declarant shall not be entitled to select under the terms and provisions of these Bylaws shall be elected by a plurality (or excess of votes cast over those of opposing candidates) of the votes cast at the Annual Meeting of the members of the Association immediately following the selec-

tion of the members of the Board of Directors whom the Declarant shall be entitled to select.

(c) Vacancies in the Board of Directors may be filled until the date of the next annual meeting by the remaining directors, except that should any vacancy in the Board of Directors be created in any directorship previously filled by any person selected by the Declarant, such vacancy shall be filled by the Declarant's selection, by written instrument delivered to any officer of the Association, of the successor director to fill the vacated directorship for the unexpired term thereof.

(d) At each annual meeting, the Members shall elect the number of directors provided in these Bylaws. Every Member entitled to vote shall have the right to vote a total number of votes held by such Member as set out in Section 4.8 of these Bylaws, for as many persons as there are directors to be elected. Persons receiving the highest number of votes shall be elected.

(e) In the event that the Declarant, in accordance with the rights herein established, selects any person to serve on any Board of Directors of the Association, the Declarant shall have the absolute right at any time, in its sole discretion, to replace such person with another person to serve on any Board of Directors. Replacement of any person designated by the Declarant to serve on any Board of Directors of the Association shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name of the person to be replaced and the name of the person designated as successor to the person so removed from the Board of Directors. The removal of any director and designation of his or her successor shall be effective immediately upon delivery of such

written instrument by the Declarant to any officer of the Association.

(f) Any director (other than a director selected by the Declarant) may be removed from the Board, with or without cause, by a majority vote of the Members of the Association at any special or regular meeting of the membership. "Majority vote" shall mean the vote of a majority of Owners, voting in accordance with these Bylaws. If any Directors are so removed, new directors may be elected by the membership at the same meeting.

Section 5.7 Vacancies. Except as otherwise provided in Section 5.6 hereof, a vacancy occurring in the Board of Directors may be filled by a majority of the remaining directors, though less than a quorum, or by the sole remaining director; but a vacancy created by an increase in the authorized number of directors shall be filled only by election at an annual or substitute annual meeting or at a special meeting of Members called for the purpose or by unanimous consent of the Members without meeting. The Members may elect a director at any time to fill any vacancy not filled by the directors. As indicated in Section 5.6(f), the membership shall have the right to fill any vacancy created by the membership's removal of a director.

Section 5.8 Chairman. There may be a Chairman of the Board of Directors elected by the directors from their number at any meeting of the Board. The Chairman shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the Board. In the absence of the Chairman, the President shall preside at all meetings of the Board of Directors.

Section 5.9 Compensation. Directors' fees, if any, shall be determined by the Members of the Association. Each Director shall be reimbursed for reasonable out-of-pocket ex-

penses incurred and paid by him on behalf of the Association. Each Director, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit, if no fees are set by the Members.

Section 5.10 *Loans to Directors and Officers.* No loans shall be made by the Association to its directors or officers. The directors of the Association who vote for or assent to the making of a loan to a director or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 5.11 *Meetings of Directors.*

(a) *Organizational Meetings.* Immediately after each annual meeting of Members of the Association, the newly elected (or selected) directors and those directors whose terms hold over shall hold an organizational meeting for the purpose of electing officers and transacting other business. Notice of such meetings need not be given.

(b) *Regular Meetings.* Regular Meetings shall be held at least monthly without notice, at such hour and place as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(c) *Special Meetings.* Special meetings shall be held when called by the President of the Association, or by any two directors, after not less than three nor more than thirty days' written notice to each director.

(d) *Notices of Special Meetings.* Written notice stating the time and place of the meeting shall be delivered not less than three nor more than fifteen days before the date of the meeting. The notice provided for herein may be waived by

written instrument signed by those directors who do not receive said notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mails with proper postage paid and addressed to the director at his last known address on file with the Association, (2) deposit of same in his mail box at Chimney Rise Townhomes, should he reside there, or (3) delivery to the director. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting unless the director gives a written statement at the meeting to the person presiding in which he objects to the transaction of any business because the meeting is not lawfully called.

(e) *Quorum.* A majority of the directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board. A majority of the directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned for lack of a quorum or without completing the business scheduled to come before the meeting, notice of the time and place to which such meeting is adjourned need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration, Articles of Incorporation or these Bylaws.

Section 5.12 *Action without Meeting.* The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.13 *Presumption of Assent.* A director of the Association who is present at a meeting of the Board of Directors, at which action on any Association matter is taken, shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association within three (3) days after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 5.14 *Powers and Duties.* The Board of Directors shall have all powers and duties necessary for it to carry out the purposes of the Association as set forth in Section 2.1 hereof and in the Articles of Incorporation of the Association except such powers and duties as by law or by the Townhome Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

- (a) Ownership, operation, care, upkeep, maintenance and replacement of the Common Area;
- (b) Determination of the funds required for operation, administration, maintenance and other affairs of the Prop-

erties and collection of the Assessments from the Owners, as provided in the Declaration;

(c) Employment and dismissal of personnel necessary for the efficient operation and maintenance of the Common Area and performing the other obligations of the Association set forth in the Declaration;

(d) Adoption of Rules and Regulations covering the details of the operation and use of the Common Area. This power shall include the authority to enforce by legal means or proceedings the provisions of the Townhome Documents;

(e) Suspension of the voting rights and rights to use of the Common Area as provided in Article V, Section 8, of the Declaration;

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(g) Purchasing, leasing or otherwise acquiring in the name of the Association, or its designee, Lots as and if permitted by the Declaration;

(h) Purchasing Lots at foreclosure or other judicial sales in the name of the Association, or its designee, with the unanimous consent of all Owners except the Owner of the Lot in question;

(i) Selling, leasing, mortgaging, voting the votes appurtenant (other than for the election of directors), or otherwise dealing with Lots acquired by the Association or its designee;

(j) Granting licenses for vending machines;

(k) Obtaining insurance for the Common Area and, at its election, the Townhomes on the Properties;

(l) Authorizing the execution and delivery by officers of the Association of contracts, agreements and other documents in furtherance of the Declaration and these Bylaws;

(m) Keeping detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and identifying the maintenance and repair expenses of the Common Area and any other expense incurred. Both said records and the vouchers accrediting the entries thereupon shall be available for examination by all the Owners, or their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good and accepted accounting practices and an outside audit shall be made at least once a year;

(n) Obtaining appropriate fidelity bond coverage, which coverage shall be required by the Directors, for any person or entity handling funds of the Association, including, but not limited to, employees of any contractor obtained to manage the Association properties pursuant to subparagraph (g) hereof;

(o) Keeping a complete record of the minutes of all meetings of the directors and membership, in which minute book shall be inserted action taken by the directors or members by consent without meeting; and

(p) Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed.

(q) Contracting for the management of the Association properties and to designate such contractor all of the powers and duties of the Association, except those which may be required by the Declaration or these Bylaws to have approval of the Board of Directors or membership of the Association, all in accordance with Article XVI Section 15 of the Declaration.

ARTICLE 6

Officers

Section 6.1 *Enumeration of Officers.* The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time elect. Except for the President, no officer need be a member of the Board of Directors.

Section 6.2 *Election and Term.* The officers of the Association shall be elected annually by the Board of Directors. Such elections shall be held at the first meeting of the Board next following the annual or substitute annual meeting of the members. Each officer shall hold office until his death, resignation, removal or until his successor is elected.

Section 6.3 *Removal.* Any officer elected or appointed by the Board of Directors may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 6.4 *Vacancy.* A vacancy in any office may be filled by the election by the Board of Directors of a successor to such office, except as otherwise herein provided. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 6.5 *Multiple Offices.* The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person.

Section 6.6 *President.* The President shall be a member of the Board of Directors and shall be the chief executive officer of the Association and shall preside at all meetings of the members. In the absence of an elected chairman, he shall

also preside at all meetings of the Board of Directors. He shall see that the orders and resolutions of the Board of Directors are carried out; he shall sign all written instruments regarding the Common Area and shall co-sign all checks and promissory notes, if any. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws and the Declaration.

Section 6.7 *Vice Presidents.* The Vice Presidents in the order of their election, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board of Directors shall prescribe.

Section 6.8 *Secretary.* The Secretary shall keep the minutes of all meetings of Members and of the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; he shall, in general, perform all duties incident to the office of Secretary of a corporation organized under Chapter 55A of the North Carolina General Statutes.

Section 6.9 *Treasurer.* The Treasurer shall have the responsibility for the Association funds and securities and shall be responsible for keeping full and accurate financial records in books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign all checks and promissory notes of the Association; shall cause an annual audit of the Association books to be made by a public accountant at the completion of income and expenditures to be presented to the membership at its annual meeting; and shall deliver a copy of each to the Members. He shall perform all duties incident to the office of Treasurer of a corporation

organized under Chapter 55A of the North Carolina General Statutes.

Section 6.10 *Assistant Secretaries and Treasurers.* The Assistant Secretaries and Assistant Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those officers, and they shall, in general perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 6.11 *Loans to Officers.* The Association shall not make any loans, either directly or indirectly, to any officer of the Association. Any officer or officers participating in the making of any such loan shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof. Nothing herein is intended to otherwise limit the liability of Directors in connection with such loans. (See Section 5.9)

Section 6.12 *Compensation.* No officer shall receive any compensation from the Association for acting as such. Provided, however, each officer shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association.

Section 6.13 *Indemnification of Directors and Officers.* Each director and officer of the Association, and each former director and former officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he is or may be made a party by reason of his being or having been such director or officer of the Association (whether or not he is a director or officer at the time of incurring such costs and expenses), except with respect to matters as to which

he shall be adjudged in such action, suit or proceeding to be liable for willful misfeasance or malfeasance in the performance of his duty as such director or officer. In case of the settlement of any action, suit or proceeding to which any director or officer of the Association, or any former director or officer of the Association, is made a party or which may be threatened to be brought against him by reason of his being or having been a director or officer of the Association, he shall be indemnified by the Association against the costs and expenses (including the cost of settlement) reasonably incurred by him in connection with such action, suit or proceeding (whether or not he is a director or officer at the time of incurring such costs and expenses), if (a) the Association shall be advised by independent counsel that, in such counsel's opinion, such director or officer did not commit willful misfeasance or malfeasance in the performance of his duty as such director or officer with respect to the matters covered by such action, suit or proceeding, and the cost to the Association of indemnifying such director or officer (and all other directors and officers, if any, entitled to indemnification hereunder in such case) if such action, suit or proceeding were carried to a final adjudication in their favor could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such directors and officers as a result of such settlement, or (b) disinterested Association members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such director or officer of such costs and expenses. The phrase "disinterested members" shall mean all members of the Association other than (i) any director or officer of the Association who at the time is or may be entitled to indemnification pursuant to the foregoing provisions, (ii) any corporation or organization of which any such

director or officer owns of record or beneficially ten percent (10%) or more of any class of voting securities, (iii) any firm of which such director or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such director or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representative of each such director or officer, and shall not be exclusive of other rights to which any director or officer may be entitled as a matter of law or under the Declaration, any vote of the Association members or any agreement. The Board may purchase and maintain such Directors' and Officers' Liability Insurance as it shall deem appropriate, and premiums for such insurance policies shall be deemed for all purposes proper expenses of the Association.

ARTICLE 7

Amendments

Section 7.1 Amendments. Subject to the provisions of Section 7.2 hereof, the Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding ninety percent (90%) of the Votes of the Association (which percentage amount shall be reduced to seventy-five percent (75%) from and after the twentieth anniversary of the date of recording of the Declaration in the Wake County Public Registry) and the holders of Institutional Mortgages on Lots which have at least fifty-one percent (51%) of the votes of all Lots subject to Institutional Mortgages, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Wake County, North Carolina. Provided, however, where a unanimous vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in these Bylaws, no amendment of the subject bylaw shall be made unless and until the Owners holding one hundred percent (100%) of the vote in the Association execute said amending instrument. All

persons or entities who own or hereafter acquire any interest in the Properties shall be bound to abide by any amendment to these Bylaws upon the same being passed as provided herein and duly set forth in an amended Bylaws, duly recorded as provided herein.

Section 7.2 *Limitations on Amendment.* Notwithstanding the foregoing, the following limitations or right to amend shall apply:

(a) No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the holders of Institutional Mortgages on any Lot or Lots shall be made without prior written consent of one hundred percent (100%) of all holders of Institutional Mortgages on Lots being first had and obtained.

(b) No alternation, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Declarant (including any change in the number of directors so long as the Declarant retains an existing or prospective right to select any directors) shall be made without the written consent of the Declarant being first had and obtained.

ARTICLE 8

Miscellaneous

Section 8.1 *Severability.* Invalidation of any covenant, condition, restriction or other provision of these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 8.2 *Gender, Singular, Plural.* Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 8.3 *Construction.* The provisions of the Town-home Documents shall be liberally construed to effect their

purpose of creating a uniform plan of Townhome ownership. The Section headings are for convenience of reference only and shall not be considered part of the Declaration or these Bylaws.

Section 8.4 *Parliamentary Rules.* Robert's Rules of Order (latest edition) shall govern the conduct of corporate proceedings, so long as the same are not in conflict with the Articles of Incorporation, the Declaration, these Bylaws or with the laws of the State of North Carolina.

Section 8.5 *Notices and Disclosures to Mortgages.* So long as any lender shall hold an Institutional Mortgage upon or shall be the Owner of any Lot as the result of foreclosure or sale in lieu of foreclosure with respect to an Institutional Mortgage, such lender shall have the following rights:

(a) To be given not less than seven (7) days' prior written notice by the Association of any meeting of the Members, which notice shall state the purpose of such meeting unless it is an annual meeting; and to designate a representative to attend.

(b) To receive written notice of default (which has continued for thirty (30) days) by any Owner owning a Lot encumbered by an Institutional Mortgage held by the lender, such notice to be sent to the place which it may designate in writing.

(c) To be given written notice of any loss to or taking of the Common Area if such loss or taking exceeds \$10,000.00 or damage to a Lot in excess of \$1,000.00.

(d) To be given written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

Whenever any lender desires the provisions of this Section to be applicable to it, it shall give written notice of such fact to the Association, identifying the Lot upon which any

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such lender holds any mortgage, or identifying any Lot owned by it, together with sufficient facts to identify such mortgage and which notice shall designate the place to which notices are to be given by the Association to such lender.

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