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DECLARATION OF PROTECTIVE COVENANTS

FOR

WILLOW TRACE AT CARY PARK TOWNHOMES

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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Name</u>
"A"	Definitions
"B"	Property Submitted
"C"	Additional Property which can be Unilaterally Submitted by Declarant
"D"	Bylaws of Willow Trace at Cary Park Townhome Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS

FOR

WILLOW TRACE AT CARY PARK TOWNHOMES

THIS DECLARATION is made on the date hereinafter set forth by John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation (hereinafter sometimes called "Declarant").

Background Statement

Declarant is the owner, or if not the owner has the written consent of the owner, of the real property described in Article II, Section 1 of this Declaration.

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

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

Article I Definitions

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

Article II Property Subject to this Declaration

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

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

Article III

Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. In the event of multiple Owners of a Unit, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Unit owned.

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

Section 3. Membership in Master Association. Every Owner, by acceptance of a deed to a Unit, acknowledges that the Unit is subject to the Master Declaration. Such Owner is automatically a member of the Master Association.

Article IV

Assessments

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

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

terms of this Declaration. All such assessments, together with late charges, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, costs and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with late charges, interest, costs and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Unit, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within ten (10) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit shall be binding upon the Association as of the date of issuance.

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

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay full assessments.

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget, the assessment to be levied against each Unit for the year (or portion thereof in the case of the initial budget) and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present) to be provided to each member no more than thirty (30) days after the adoption of the budget. The date for the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. The meeting shall be held at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget is ratified and the assessment shall become effective unless disapproved at the meeting by at least seventy-five (75%) percent of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget last ratified shall be continued until an new budget is

ratified. Any surplus funds of the Association remaining after payment of or provision for the common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves shall not be refunded or credited to the Owners but shall be Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 3. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments. So long as the total amount of special assessments allocable to each Unit does not exceed Three Hundred Dollars (\$300.00) in any one fiscal year, the Board may impose the special assessment. Except as provided in Article VII, Section 2 hereof, any special assessment which would cause the amount of special assessments allocable to any Unit to exceed this limitation shall be effective only if approved by a Majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 4. Lien for Assessments. All sums assessed against any Unit pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided herein, when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Unit in favor of the Association, when the Association files a claim of lien in the office of the clerk of superior court of the county in which the Unit is located in the manner provided by law. Such lien shall be superior to all other liens and encumbrances on such Unit, except for (i) liens and encumbrances recorded before the docketing of the claim of liens and (ii) liens for real estate taxes and other governmental assessments and charges against the Unit.

Section 5. Effect of Nonpayment of Assessments: Remedies of the Association. Any sums (including assessments or installments thereof) assessed against any Unit pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a claim of lien, as herein provided, may be filed in the office of the clerk of superior court of the county in which the Unit is located in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. If any sum assessed against any Unit pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same.

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

Section 6. Date of Commencement of Assessments/Assessment Obligation of Declarant.

(a) The assessments provided for herein shall commence as to all Units subject to assessment hereunder as of the first day of the calendar year in which the first Unit is conveyed by Declarant to a Person other than Declarant. All assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide.

(b) After the commencement of assessment payments as to any Unit, Declarant and its affiliates, on behalf of themselves and their respective successors and assigns, covenant and agree to pay the full amount of the assessments provided herein for each Unit owned by Declarant or its affiliates containing an occupied residence; provided, however, each Unit owned by Declarant or its affiliates which does not contain an occupied residence shall not be subject to any assessment provided for herein.

(c) Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

(d) Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant, or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant, or its affiliate, as the case may be, cannot agree as to the value of any contribution, the Declarant, or its affiliate, as the case may be, shall supply the Association with a detailed explanation of the service performed and materials furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 7. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to

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

(a) Expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received.

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

Section 8. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or its affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual assessment per Unit for that year. This contribution shall be in addition to, not in lieu of, any other assessments levied on the Unit and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. This contribution shall be collected at the closing of the Unit and disbursed to the Association for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 9. Budget Deficits during Declarant Control. For so long as Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Section 10. Master Association Assessments. In addition to this Declaration, each Unit is also subject to the Master Declaration. Accordingly, each Owner shall also pay assessments to the Master Association as provided in the Master Declaration.

Article V

Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, paving and other improvements situated on the Common Property. The Association shall also maintain (i) all entry features for the Community, (ii) all storm water drainage detention and retention areas and related facilities which were originally installed or maintained by Declarant or its affiliates in the Community, to the extent such areas and facilities are not maintained on an ongoing basis by a governmental entity or the Master Association, and (iii) all water and sewer pipes or facilities which serve more than one (1) Unit, whether located within or without the Unit's boundaries, to the extent that such pipes and facilities are not maintained by public, private or municipal utility companies. The Association shall also maintain all property outside of Units located within the Community which was originally maintained by Declarant or its affiliates.

The Association shall also maintain and keep in good repair the Area of Common Responsibility which shall be deemed to include the following: (a) exterior surfaces of garage doors (but the Unit Owner shall be responsible for the operation of the garage doors), (b) mowing and maintenance of all grass within the Community (except for grass enclosed within fences and/or structures on the Unit), (c) all roofs, downspouts and gutters, (d) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade, and (e) all driveways. Specifically excluded from the Area of Common Responsibility shall be the following: (1) walkways, steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces and landscaping within the patios, planters or courtyards, if any, of the Units, (2) HVAC or similar equipment located outside the Units, (3) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system, (4) hose bibs contained in exterior walls of a Unit, (5) lighting fixtures pertaining to a particular Unit and being located outside an entryway or in a garage, (6) window screens, window frames and glass, (7) foundations and footings, including waterproofing, and (8) pipes which serve only one (1) Unit whether located within or without the Unit's boundaries. Upon resolution of the Board of Directors and approval of a Majority of the Total Association Vote, the Association may assume responsibility for providing additional exterior maintenance of a Unit.

The Association may, but shall not be obligated to, maintain, repair or replace, as necessary, all mailboxes or mailbox posts located within the Community. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

There is hereby reserved to the Association a blanket easement upon, across, over and under all property within the Community for access, ingress and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by or resulting from the elements, the Owner of any Unit, any other person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Property, or any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities hereunder where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board of Directors.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Unit shall be the sole responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus serving only the Unit). Such maintenance shall be performed in a manner consistent with this Declaration and the Community-Wide Standard. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color, shall require prior approval of the Board or its designee pursuant to Article VI, Section 9 of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to, landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair.

Each Owner shall be obligated:

- (a) to perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units;
- (b) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and
- (c) not to make any alterations in the portions of the Unit which are to be maintained by the Association, remove any portion thereof, make any additions thereto, or do anything with respect to the exterior or interior of the Unit which would or might jeopardize or impair the safety or soundness of any Unit, without first obtaining the written consent of the Board and all Unit Owners

and Mortgagees of the Units affected, and each Owner shall also be obligated not to impair any easement without first obtaining written consent of the Association and of the Unit Owner or Owners and their Mortgagees for whose benefit such easement exists.

Section 3. Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days from the date of the notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within such ten (10) day period and diligently pursue completion of such replacement or repair. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees or invitees, then the Association may assess the cost of any such maintenance, repair or replacement against the Owner's or Occupant's Unit, which shall become a lien against the Unit and shall be collected as provided herein for the collection of assessments.

Section 4. Measures Related to Insurance Coverage.

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require, so long as the cost of such work does not exceed Five Hundred Dollars (\$500.00) per Unit in any twelve (12) month period.

(b) In addition to, and not in limitation of, any other rights the Association may have, if

any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to Section 4(a) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 4(a) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

Section 5. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

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

Article VI

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XII, Section 4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate, modify or delete other use restrictions and rules and regulations applicable to the Units and the Common Property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. Such regulations and use restrictions shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified in a regular or special meeting by a Majority of the Total Association Vote.

Section 2. Use of Units. All Units shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted in, from or upon any Unit or any part of the Community at any time without the prior written approval of the Board, except that the Owner or Occupant residing in a Unit may conduct such ancillary business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (b) the business activity does not involve regular, frequent or conspicuous visitation of the Unit by employees, clients, customers, suppliers or other business invitees for business purposes; (c) the business activity conforms to all zoning requirements for the Community; (d) the business activity does not increase traffic in the Community (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; and (g) the business activity does not result in a materially greater use of common facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full- or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

This Section shall not apply to activities of the Association. Leasing of a Unit shall not be considered a trade, business or business activity. Units may be leased for residential purposes.

Section 3. Signs. No sign of any kind shall be erected or displayed by an Owner or

Occupant within the Community without the prior written consent of the Board except: (a) one (1) professional security sign consistent with the Community-Wide Standard not to exceed four inches (4") by four inches (4") in size displayed from within a Unit; (b) such signs as may be required by legal proceedings; and (c) signs erected by Declarant and its affiliates. In addition, in connection with a bona-fide offer to sell or lease a Unit, one (1) professionally lettered "For Sale" or "For Rent" sign consistent with the Community-Wide Standard may be displayed from within a Unit, but only if (i) the sign has a maximum area of four (4) square feet, and (ii) the content of the sign and anything else attached to, associated with or in the vicinity of the sign states or conveys only that the Unit is for sale or for rent and the name and telephone number of the person to contact for additional information. Any other type of "For Sale" or "For Rent" sign shall not be permitted in the Community. The Board shall have the right to erect any reasonable and appropriate signs. The Board may impose a fine against any Owner or Occupant of up to One Hundred Fifty Dollars (\$150.00) per day for violations of this Section in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments

Section 4. Vehicles/Parking. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, automobiles and limousines. Vehicles shall not be parked on any street within the Community, or on the Common Property, except in designated parking areas. Vehicles shall not be parked on a Unit, except in the driveway and the garage. Unless and except to the extent that the Occupants of a Unit shall have more vehicles than the number of garage parking spaces serving their Unit, all vehicles shall be parked within such garage parking spaces. Vehicles may be parked in the driveway serving a Unit only after all of the garage parking spaces serving such Unit have vehicles parked in them. Owners and Occupants shall not park in the visitor parking areas on the Common Property. All parking shall be subject to such further rules and regulations as the Board may adopt.

Disabled vehicles, stored vehicles, boats, trailers, campers, buses, vans, trucks (except pick-up trucks and sport utility vehicles), recreational vehicles (for example, without limitation, RV's and motor homes), vehicles used primarily for commercial purposes and vehicles with commercial writing on their exteriors are prohibited from being parked in the Community, except in garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Unit or the Common Property; provided, however, without the prior written consent of the Board, no such vehicle shall be authorized to remain in the Community overnight or for any purpose except serving a Unit or the Common Property. For purposes of this paragraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains on the Community for three (3) consecutive days or longer without the prior written permission of the Board.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged

violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked in any unpaved area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any director, officer or agent of the Association shall be liable to any person for any claim of damage or otherwise as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 5. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Unit even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 6. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted in the Community, except that dogs, cats or other usual and common household pets in reasonable number, as determined by the Board, may be kept within a Unit; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise or endanger the health of or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community.

Section 7. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on or within his or her Unit. No Unit shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon or within any Unit that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon or within any Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Unit. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

Section 8. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken in any part of the Community.

Section 9. Architectural Standards. All architectural control for the Community shall be governed by the requirements of Article VI, Section 9 of the Master Declaration and required approvals under the Master Declaration, if any, must be obtained by Owners of Units in the Community. Units shall also be governed by the architectural guidelines and procedures set forth in this Article. No exterior construction, alteration, addition or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, treehouses and play equipment) shall be commenced or placed upon any part of the Community, except such as is installed by Declarant or its affiliates, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection or alteration shall be made unless and until the plans and specifications showing at least the nature, kind, shape, height, materials and location shall have been submitted in writing to and approved by the Board or its designee. The Board or its designee may promulgate written guidelines for the exercise of this review.

The Board or its designee shall be the sole arbiter of such plans and specifications and may withhold approval on any reasonable basis, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its designee or the representatives thereof shall have the right, during reasonable hours, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If the Board or its designee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after such plans and specifications have been submitted to it, such plans and specifications will be deemed approved. However, all activities commenced pursuant to plans which have been deemed approved shall be consistent with such plans.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any change, modification, addition or alteration. In the discretion of the Board or its designee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, THE BOARD, ITS MEMBERS, ITS DESIGNEE AND THE ASSOCIATION DO NOT ASSUME LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, AND THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL NOT BE

LIABLE IN DAMAGES OR OTHERWISE TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS, BY REASON OF ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS AND EVERY OWNER AGREE THAT SUCH PERSONS AND OWNERS WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ITS PARTNERS AND AFFILIATES, THE ASSOCIATION, THE BOARD, ITS DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS OF ANY OF THEM, TO RECOVER ANY DAMAGES OF FOR ANY OTHER PURPOSE, AND SUCH PERSONS AND OWNERS HEREBY RELEASE, REMISE, QUITCLAIM AND COVENANT NOT TO SUE FOR ALL CLAIMS, DEMANDS AND CAUSES OF ACTION, ARISING OUT OF OR IN CONNECTION WITH ANY MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR THE FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS AND SPECIFICATIONS. ALL SUCH PERSONS AND OWNERS HEREBY WAIVE THE PROVISIONS OF ANY LAW WHICH PROVIDE THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 10. Antennas and Satellite Dishes. No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multi-point distribution service ("MMDS") antennas larger than one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Unit, without the prior written consent of the Board or its designee. DBS and MMDS antennas and satellite dishes one (1) meter or less in diameter and television broadcast service antennas may be installed only if reasonably screened and located as approved by the Board or its designee and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, the Board and Declarant (and its affiliates) reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

Section 11. Gardens, Basketball Goals, Etc. Any planting may be done only with the prior written approval of the Board or its designee or in accordance with the guidelines previously established by the Board or its designee. No vegetable garden, hammocks, statuary or recreational equipment (including basketball goals) may be placed, erected, allowed or maintained within the Community without the prior written consent of the Board or its designee.

Section 12. Lighting. No exterior lighting shall be installed in the Community without the prior written consent of the Board or its designee, except for lighting originally installed by the

Declarant or its affiliates and seasonal decorative lights during the Christmas season.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Unit may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 14. Clotheslines, Garbage Cans, Woodpiles, Etc. No exterior clotheslines, woodpiles and other similar items of any type shall be permitted in the Community without the prior written consent of the Board or its designee. All garbage cans, woodpiles and other similar items shall be kept within the Unit so as to be concealed from view of neighboring Units, streets and property located adjacent to the Unit. All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Trash and recycling receptacles shall be placed at the curb no earlier than 5:00 p.m. the day before pickup and shall be removed within twenty-four (24) hours. Trash pickup shall be subject to such further rules and regulations as the Board may adopt. Notwithstanding the foregoing, the Association reserves the right to provide and maintain a dumpster for the use of residents within the Community. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow, in Declarant's sole discretion, developers and builders within the Community to do so.

Section 15. Tree Removal. No trees shall be removed without the express prior written consent of the Board or its designee, except for (a) trees removed by Declarant or its affiliates; (b) diseased or dead trees; and (c) trees needing to be removed to promote the growth of other trees.

Section 16. Lighting. No exterior lighting shall be installed in the Community without the prior written consent of the Board or its designee, except for lighting originally installed by the Declarant or its affiliates and seasonal decorative lights during the Christmas season.

Section 17. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Unit may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Declarant, for itself and its affiliates, reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant, for itself and its affiliates, hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected

property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 18. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Unit(s) or other property in the Community. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 19. Guns. The use of firearms or discharge of fireworks in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns and small firearms of all types. The term "fireworks" shall include those items listed in O.C.G.A. Section 25-10-1.

Section 20. Solar Devices. No artificial or man-made device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Community, including any Unit, without the prior written consent of the Board or its designee.

Section 21. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, except as installed by Declarant (or its affiliates) or the Board, without the prior written consent of the Board or its designee.

Section 22. Exterior Colors. As provided in Article V, Section 1 hereof, exterior maintenance of Units, including, without limitation, painting, is the responsibility of the Association. Accordingly, Owners shall not paint or otherwise alter the exterior of any Unit or improvements constructed or maintained thereon without the prior written consent of the Board or its designee. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Unit must be painted or repainted in a color used by Declarant or its affiliates in the original construction and marketing of residences within the Community or in a color used by John Wieland Homes and Neighborhoods in the original construction and marketing of residences in any subdivision located within the same county as the Community.

Section 23. Mailboxes. No mailboxes and appurtenant posts and/or structures shall be erected without the prior written approval of the Board or its designee. Generally, the foregoing must be of the same type and color as that originally installed by Declarant or its affiliates.

Section 24. Window Coverings. All shades, drapery linings and other window treatments visible from the exterior of a Unit shall be white or off-white. No foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose.

Section 25. Garage Sales. No garage sale, yard sale, flea market or similar activity shall be conducted in the Community without the prior written consent of the Board. Any such activities that have been permitted by the Board shall be subject to all reasonable conditions imposed by the Board.

Section 26. Use of Common Property. There shall be no obstruction of the Common Property nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Board.

Section 27. Detached Structures. No detached structures shall be placed, erected, allowed or maintained upon any Unit or within the Community without the prior written consent of the Board or its designee. All detached structures must be consistent in design materials and color with the dwelling on the Unit.

Section 28. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed within the Community, or any part of any easement area associated therewith, without the prior written consent of the Board or its designee.

Section 29. Prohibition of Damage. Without the prior written consent of the Board, nothing shall be done or kept in the Community which would increase the rate of insurance which the Association is obligated to obtain hereunder, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the common expenses of the Association. No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Community or any structure located within the Community, would reduce the value thereof, or would impair any easement or hereditament thereto, without in every such case the unanimous prior written consent of all members of the Association and their Mortgagees. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any Unit shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees or Occupants of his or her Unit.

Section 30. Heating of Units during Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Community, increased common expenses of the Association, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant up to Five Hundred Dollars (\$500.00) for violation of this Section in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

Section 31. Swimming Pools. No swimming pools shall be permitted in the Community without the prior written consent of the Board and in no event shall above ground swimming pools be permitted in the Community.

Article VII

Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 hereof and blanket insurance for all Units; provided, however, the Association's insurance shall not include the Unit Owners' personal property (which shall be the sole responsibility of the Unit Owner). This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

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

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

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

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

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

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

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

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

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

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

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

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

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

(vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board,

a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

Section 2. Damage and Destruction – Property Insured by Association.

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

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote and the Owner or Owners of any damaged Unit or Units otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article IV, Section 8 of this Declaration; provided, however, no Owner shall be assessed more than One Thousand Dollars (\$1,000.00) as the cost of the deductible for any one occurrence.

Article VIII **Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX **Annexation and Withdrawal of Property**

Section 1. Unilateral Annexation by Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such

any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner thereof and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Units (other than Units owned by Declarant so long as the consent of Declarant is required), the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Section 3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

Article X

Mortgagee Provisions

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

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

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

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first

Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

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

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

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

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

Section 4. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. VA/HUD Approval. As long as Declarant has the right to appoint and remove the directors and officers of the Association and so long as the Community is approved by HUD for insuring any Mortgage in the Community (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) or the VA for guaranteeing any Mortgage in the Community (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1, hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Common Property; and material amendment of the Declaration, the Bylaws, or the Articles of Incorporation of the Association.

Section 6. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI

Easements

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

Section 2. Easements for Use and Enjoyment.

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

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Unit Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests and invitees;

(ii) the right of the Association to suspend the voting rights of a Unit Owner and the right of an Owner to use facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Unit which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its

affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Persons entitled to cast at least eighty percent (80%) of the Total Association Vote); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved in writing by Declarant (so long as Declarant owns any property for development and/or sale within the Community or has the right unilaterally to annex additional property to the Community) and Persons entitled to cast at least eighty percent (80%) of the Total Association Vote.

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

Section 3. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for Declarant, the Association, or the designees of either, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repairing, replacing and maintaining, of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easements for Association Maintenance. There is hereby expressly reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner,

and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 6. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Unit, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Units and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Unit Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Unit shall be restored to substantially the same condition as existed prior to the damage.

Section 7. Easements for Entry Features and Street Signs. There is hereby reserved to the Declarant, the Association, and the designee of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

Section 8. Easements for Encroachments. The dwellings located on the Units may have certain eaves, roof overhangs, building materials and other structures attached to the walls and roofs of such dwellings which may encroach over or extend into the air space, improvements and/or real property located on adjoining or continuous Units and/or Common Property. All of the Units and the Common Property shall be subject to easements for encroachments and for the maintenance, repair and replacement thereof as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement so long as such encroachment exists. If any such Unit, including any dwelling located thereon, is damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the Owner of such Unit shall have an easement to reconstruct such encroachments in connection with the reconstruction of such dwelling. Easements shall also exist for encroachment upon the Common Property and/or Units as necessary for the express purpose of maintenance, repair and restoration of any Unit or structure located thereon. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance, repair and restoration. The Owner of the Unit exercising the easement right shall be liable for the prompt repair of any damage to the property over which the easement is exercised which is caused by the maintenance, repair or restoration work. The damaged portions of such property shall be restored to substantially the same condition as existed prior to the damage.

Section 9. Easement to Master Association. In addition to the above, the officers, agents, employees and independent contractors of the Master Association have such easements to enter upon the Community for the purpose of performing or satisfying the duties and obligations

of the Master Association as are set forth in the Master Declaration.

Section 10. Unit Owner - Easement for Utilities. Declarant hereby establishes for the benefit of each Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. The Board, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements and other easements, permits or licenses under, through or over the Units and/or the Common Property as may be necessary to or desirable for the proper maintenance and/or ongoing operation of the Community. If any Owner desires access to the attic or other areas of another Unit or to the Common Property in order to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other Unit(s) or the Association, as the case may be, at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any owner of property to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect Units, other property and the property of Owners and Occupants, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 11. Easement for Driveway. Declarant hereby grants, conveys, declares, creates, imposes and establishes for the benefit of each Unit a perpetual, exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the driveway serving each Unit. The easement herein granted shall permit usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) the invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any driveway easement area which are not inconsistent with the rights and privileges herein granted.

Article XII **General Provisions**

Section 1. Enforcement. Each Owner and every Occupant of a Unit shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Unit, if any. The Board of Directors may impose reasonable fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate

land records a notice of violation of the Declaration, Bylaws, rules and regulations or use restrictions and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Unit or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Unit Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice and as otherwise provided herein. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner and shall be collected as provided for herein for the collection of assessments.

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

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

property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Units (other than Units of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to Declarant and/or its affiliates shall be amended without the prior written consent of Declarant and any affiliates affected by such amendment, so long as Declarant and/or such affiliates, as the case may be, own any property primarily for development and/or sale in the Community or subject to annexation by Declarant to the Community.

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

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

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

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

Section 8. Conveyance of Property to Association; Assignment of Contracts. Declarant and its affiliates may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. The Association hereby constitutes and appoints Declarant or its assigns as agent and attorney-in-fact to accept on behalf of the Association any such conveyance to the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to

effectuate and document any such conveyance to the Association, and all of the acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.

Declarant and its affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section, and Declarant and its affiliates shall have no duty or obligation whatsoever to convey any property or property rights to the Association, regardless of whether or not any such property has been made available for the use of Owners. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant and its affiliates for the benefit of the Association or the Owners, including, without limitation, detention pond maintenance agreements and all types of utility easements.

Neither the recordation of any subdivision plat, nor the use by the Owners or maintenance by the Association of any property, shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property, rights, easements or licenses are conveyed to the Association or the Owners, as the case may be, by an instrument recorded in the land records of the county where the property is located.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. In accordance with, and to the full extent allowed by, the North Carolina Nonprofit Corporation Act, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, the Articles of Incorporation of the Association, rules and regulations, use restrictions, and any amendments to any of the foregoing, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Declarant, its successors and assigns, over, under, in, and/or on the Community, without obligation and without charge to Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in the Community and any other property now owned or

which may in the future be owned by Declarant (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant facilities, if any, constructed in the Community for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio, and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities, with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Units in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and collection therefor may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of Declarant so long as Declarant owns any property primarily for development and/or sale in the Community or has the

right unilaterally to annex additional property to the Community.

Section 12. Books and Records.

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

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

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

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

Section 13. Financial Statements. Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

Section 14. Notice of Sale or Lease. In the event an Owner sells or leases his or her Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Unit and such other information as the Board may reasonably require.

Section 15. Agreements. Subject to the prior approval of Declarant, so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 16. Variances. Notwithstanding anything to the contrary contained herein, the

Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 17. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant pursuant to Article XII, Section 4 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 18. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 19. Cumulative Effect; Conflicts. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Master Declaration; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, the more restrictive provision shall govern. In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the extent that the provisions of North Carolina law cannot be waived by agreement, North Carolina law shall control.

Section 20. Security.

(a) The Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Units safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR

CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO UNITS, AND TO THE CONTENTS OF UNITS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.

(b) All members of the Master Association shall have the right to access the recreational facilities of the Master Association located within the Community.

[continued on next page]

IN WITNESS WHEREOF, the undersigned has executed this instrument and affixed the seal this 3rd day of January, 2003.

Witness

Witness

JOHN WIELAND HOMES AND
NEIGHBORHOODS OF NORTH CAROLINA,
INC., a Georgia corporation

By:

Andrea Lofstrand
Andrea Lofstrand
Assistant Secretary

[CORPORATE SEAL]

STATE OF GEORGIA

COUNTY OF CLAYTON

On this 3rd day of January, 2003 personally appeared before me Andrea Lofstrand the said named Assistant Secretary of John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation, known to me to be the person described hereinabove and who executed the foregoing instrument, and she acknowledged that she executed the same on behalf of the corporation.

[NOTARIAL SEAL]

My Commission Expires:



[Signature]
Notary Public

[SEAL]

[CONTINUED ON NEXT PAGE]

The Association has executed this instrument and affixed the seal below this 3rd day of January, 2003 for the purpose of consenting to all of the terms and provisions of this Declaration.

Jonathan F. Young
Witness
Lawrence M. Smith
Witness

WILLOW TRACE AT CARY PARK
TOWNHOME ASSOCIATION, INC., a North
Carolina nonprofit corporation

By: Frederick D. Evans III
Secretary

[CORPORATE SEAL]

STATE OF GEORGIA

COUNTY OF CLAYTON

On this 3rd day of January, 2003 personally appeared before me Frederick D. Evans III the said named Secretary of Willow Trace at Cary Park Townhome Association, Inc., a North Carolina nonprofit corporation, known to me to be the person described hereinabove and who executed the foregoing instrument, and he acknowledged that he executed the same on behalf of the corporation.

[NOTARIAL SEAL]

My Commission Expires:



Frederick D. Evans III
Notary Public

[SEAL]

[CONTINUED ON NEXT PAGE]

Panther Creek-Raleigh Limited Partnership, a North Carolina limited partnership has executed this instrument and affixed its seal below this 25 day of FEBRUARY, 2003, for the purpose of consenting to this Declaration and all of the terms and provisions set forth in this Declaration, pursuant to and in accordance with the Master Declaration.

Witness Janet R. Wargin

Witness James T. Griffin Jr

PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP, a North Carolina limited partnership BY HEARTSTONE INC. AS MANAGING AGENT

By: [Signature]

Print Name: MARCUS BUEROSSE

Title: SENIOR VICE PRESIDENT

[SEAL]

On this 25 day of February, 2003 personally appeared before me Marcus A. Buerosse the said named S.V.P. of Panther Creek-Raleigh Limited Partnership, a North Carolina limited partnership, known to me to be the person described hereinabove and who executed the foregoing instrument, and he acknowledged that he executed the same on behalf of the corporation.



[NOTARIAL SEAL]

Janet R. Wargin
MY COMMISSION # DD037697 EXPIRES
August 4, 2005
BONDED THIRD PARTY CLAIM INSURANCE, INC.

My Commission Expires: _____

[Signature] [SEAL]
Notary Public

EXHIBIT "A"

Definitions

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

(a) "Area of Common Responsibility" shall mean and refer to the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person or entity become the responsibility of the Association.

(b) "Association" shall mean and refer to Willow Trace at Cary Park Townhome Association, Inc., a nonprofit North Carolina corporation, its successors and assigns.

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

(d) "Bylaws" shall refer to the Bylaws of Willow Trace at Cary Park Townhome Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(e) "Common Property" shall mean any real estate within the Community owned or leased by the Association, other than a Unit.

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

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

(h) "Declarant" shall mean and refer to John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as "Declarant" hereunder by the grantor of such conveyance, which grantor shall be "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C",

attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity entitled to exercise the rights and powers of "Declarant" hereunder at any one point in time.

(i) "Majority" means those eligible votes, Owners or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(j) "Master Association" means Cary Park Property Owners Association, a North Carolina nonprofit corporation, provided for in the Master Declaration.

(k) "Master Declaration" means that certain Declaration of Covenants, Conditions, Restrictions and Easements for Cary Glen recorded on December 29, 1998 in Deed Book 8218, Page 1742, et seq., Wake County, North Carolina land records, as supplemented and amended from time to time.

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

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

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

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

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

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

(r) "Total Association Vote" means all of the votes attributable to members of the Association (including votes of Declarant) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

(s) "Unit" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site (whether an attached or detached dwelling), as shown on any plats for the Community, or amendments or supplements thereto, recorded in the land records for the

county where the Community is located. If a dwelling on a Unit is attached by party wall(s) to one or more other dwellings, the boundary between Units shall be a line running along the center of the party wall(s) separating the Units. The ownership of each Unit shall include the exclusive right to possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, furnaces, compressors, conduits, wires and pipes), regardless of the location of such units, and of any driveway, porch, deck, patio, sunroom or any similar appurtenance as may be attached to a Unit when such Unit is initially constructed. The ownership of each Unit shall also include, and there shall pass with each Unit as an appurtenance thereto, whether or not separately described, all of the right, title and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association. The Association acknowledges and consents that certain appurtenances described above may encroach upon the Common Property, but that such encroachments are not a detriment, but rather a benefit to the Community and that an easement for the continued use and maintenance thereof is hereby established by the Declarant. Consequently, such appurtenances shall be considered a part of the Unit, maintained as provided in the Declaration, and allowed to encroach upon the Common Property; provided, however, no such appurtenant structure may be altered, changed or enlarged except in accordance with Article VI, Section 9, and any other pertinent provisions, of the Declaration.

EXHIBIT "B"

Property Submitted

ALL that real property located in Cary Township, Wake County, North Carolina and described as Tract SF-11A, Phase 1 of CARY PARK SUBDIVISION, by Withers & Ravenel recorded in Map Book 2002, Pages 1704-1705, in the Office of the Register of Deeds of Wake County, North Carolina, including those properties identified as Blocks A, B, C, D, E, F and G and Open Space and including the property located within the right-of-way of Bridgegate Drive, less and except any property shown as Phase 2 or Future Phase.

EXHIBIT "C"

Additional Property which can be Unilaterally Submitted by Declarant

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, and located within three (3) miles of that real property described in the foregoing Exhibit "B" to this Declaration of Protective Covenants for Willow Trace at Cary Park Townhomes or within three (3) miles of any other real property hereafter subjected to the Declaration of Protective Covenants for Willow Trace at Cary Park Townhomes.

s:\legal\anx\north carolina\cary park\townhome.dec.doc

rev. 010303

WAKE COUNTY, NC 935
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 02/28/2003 AT 14:22:25

BOOK:009942 PAGE:02764 - 02765

STATE OF GEORGIA

COUNTY OF CLAYTON

Return to Newson Graham Hedrick & Kenyon P.O. Box 51579 Durham NC

ASSIGNMENT OF DECLARANT'S INTEREST 277/7-1579

In consideration of the execution by Panther Creek-Raleigh Limited Partnership, a North Carolina limited partnership ("Panther Creek"), of its consent to that certain Declaration of Protective Covenants for Willow Trace at Cary Park Townhomes ("Declaration"), both recorded contemporaneously herewith in the Office of the Register of Deeds of Wake County, North Carolina, the undersigned, John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation, its successors and assigns ("Wieland"), hereby grants, bargains, conveys and assigns to Panther Creek, its successors and assigns, all of Wieland's right, title and interest as "Declarant" under the Declaration.

TO HAVE AND TO HOLD Wieland's right, title and interest unto Panther Creek in trust pending substantial compliance by Wieland with all of the terms and conditions of Wieland as Purchaser under that certain Agreement for the Purchase and Sale of Developed Lots between Panther Creek, as Seller, and Wieland, as Purchaser, having an effective date of January 29, 2002 (the "Agreement"), concerning the purchase by Wieland of property subjected or to be subjected to the Declaration.

If Wieland does not purchase the balance of the property called for under the Agreement, then Panther Creek shall have the right, but not the obligation, to succeed to the interest of Wieland as "Declarant" under the Declaration, and shall thereafter exercise all of the rights, powers and privileges appertaining thereto and contained in the Declaration.

Upon an election in such event by Panther Creek or its successors and assigns to succeed to the interest of Wieland, Wieland hereby appoints Panther Creek as its attorney-in-fact to provide notice of Wieland's failure to purchase the balance of the property called for under the Agreement and Panther Creek's election to succeed to the interest of Wieland ("Notice") in any document recorded in the Office of the Register of Deeds of Wake County, North Carolina.

RESERVING UNTO Wieland hereunder all rights, title and interest as "Declarant" under the Declaration, unless and until the events above occur.

The assignments to Panther Creek hereunder shall automatically terminate upon substantial compliance by Wieland with all terms and conditions under the Agreement.

Wieland agrees that unless and until this Assignment has terminated as provided above, it shall not surrender or give up any rights, privileges, powers or authorities contained in the Declaration without Panther Creek's prior written consent.

IN WITNESS WHEREOF, Wieland has hereunto set its hand and seal as of the day and year set forth below.

JOHN WIELAND HOMES AND

NEIGHBORHOODS OF NORTH
CAROLINA, INC., a Georgia corporationBy: *Dan Fields*Dan Fields
Vice PresidentAttest: *Andrea Lofstrand*Andrea Lofstrand
Assistant Secretary

[CORPORATE SEAL]



STATE OF GEORGIA

COUNTY OF CLAYTON

I, a Notary Public of the County and State aforesaid, certify that Dan Fields personally appeared before me this day and acknowledged that he is the Vice President of John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation, the corporation described in and which executed the foregoing instrument; that the seal affixed to the foregoing instrument is the corporate seal of the corporation and that said writing was signed and sealed by him on behalf of said corporation and by authority duly given; and that said instrument is the act and deed of said corporation.

Witness my hand and official stamp or seal this 24th day of February, 2003.*Maria Mollise*
Notary Public

My commission expires: _____

[NOTARIAL STAMP OR SEAL]



Laura M Riddick
Register of Deeds
Wake County, NC



Book : 060942 Page : 04764 - 02766

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

North Carolina - Wake County

The foregoing certificate ___ of ___

Maria Mollise

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

Laura M. Riddick, Register of Deeds

By: Frederick C. Bayan
Assistant/Deputy Register of Deeds

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___ # of Time Stamps Needed

This Document
___ New Time Stamp
3 # of Pages

BK011605PG02418

WAKE COUNTY, NC 91
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/29/2005 AT 09:27:51

Return to:
Jonathan F. Young, Esq.
1950 Sullivan Road
Atlanta, GA 30337

BOOK:011605 PAGE:02418 - 02421

Cross Reference:
Book 9939, Page 2323

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS
FOR WILLOW TRACE AT CARY PARK TOWNHOMES**

This Amendment is made as of the 16th day of September, 2005, by JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., f/k/a John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

On January 3, 2003, Declarant executed that certain Declaration of Protective Covenants for Willow Trace at Cary Park Townhomes, which was recorded on February 27, 2003 in the Office of the Register of Deeds of Wake County, North Carolina in Book 9939, Page 2323, et seq. (hereinafter, as supplemented and/or amended from time to time, the "Declaration"). The Declaration provides in Article XII, Section 4 thereof for unilateral amendment of the Declaration by Declarant.

Declarant has the right unilaterally to subject additional property to the Declaration, and this Amendment does not materially adversely affect the substantive rights of any Unit Owner (as such capitalized terms are defined in the Declaration) or adversely affect title to any Unit.

Declarant desires to amend the Declaration as set forth below.

NOW THEREFORE, pursuant to the powers retained by Declarant under Article XII, Section 4 of the Declaration, and in accordance with the provisions of that section, the Declaration is hereby amended by deleting page 22 of the Declaration in its entirety and substituting therefor the attached page 22 to be and constitute page 22 of the Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Amendment and affixed the corporate seal as of the day and year first written above.

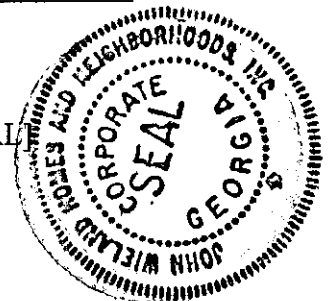
Paula Haug
Witness
[Signature]
Witness

JOHN WIELAND HOMES AND
NEIGHBORHOODS OF THE CAROLINAS,
INC., f/k/a John Wieland Homes and
Neighborhoods of North Carolina, Inc., a
Georgia corporation

By: [Signature]
Dan Fields
Vice President

Attest: [Signature]
Andrea Lofstrand
Assistant Secretary

[CORPORATE SEAL]



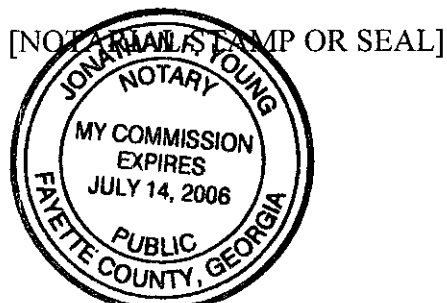
STATE OF GEORGIA

COUNTY OF CLAYTON

I, a Notary Public of the County and State aforesaid, certify that Dan Fields personally appeared before me this day and acknowledged that he is the Vice President of John Wieland Homes and Neighborhoods of the Carolinas, Inc., f/k/a John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia corporation, the corporation described in and which executed the foregoing instrument; that the seal affixed to the foregoing instrument is the corporate seal of the corporation and that said writing was signed and sealed by him on behalf of said corporation and by authority duly given; and that said instrument is the act and deed of said corporation.

Witness my hand and official stamp or seal this 16th day of September, 2005.

My commission expires: 7-14-2006



[Signature]
Notary Public

EXHIBIT A

undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 3. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article IV, Section 8 of this Declaration; provided, however, no Owner shall be assessed more than One Thousand Dollars (\$1,000.00) as the cost of the deductible for any one occurrence.

Article VIII **Condemnation**

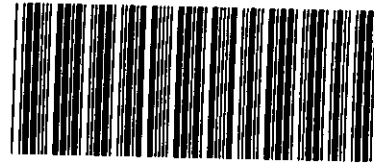
Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX **Annexation and Withdrawal of Property**

Section 1. Unilateral Annexation by Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the land records of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then Owners are not adversely affected, Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject



BOOK:011605 PAGE:02418 - 02421

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

North Carolina – Wake County

The foregoing certificate___ of Jonathan F Yonna

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

Laura M. Riddick, Register of Deeds

By: James Morgan
Assistant/Deputy Register of Deeds

This Customer Group

____ # of Time Stamps Needed

This Document

____ New Time Stamp
4 # of Pages

WAKE COUNTY, NC 110
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/12/2015 14:23:05

mail to: Rossabi, Black. Slaughter
Po Box 41027
Greensboro NC 27404

BOOK:015917 PAGE:01739 - 01744

NORTH CAROLINA

WAKE COUNTY

AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS FOR WILLOW
TRACE AT CARY PARK TOWNHOMES

THIS AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR WILLOW TRACE AT CARY PARK TOWNHOMES (the "Declaration") is made this _____ day of February, 2015, by the Willow Trace at Cary Park Townhomes Association, Inc., hereinafter referred to as the "Association."

WITNESSETH THAT

WHEREAS, by the following instruments recorded in the Wake County Registry, the Declarant, John Wieland Homes and Neighborhoods of North Carolina, Inc., a Georgia Corporation, subjected Willow Trace (the "Property") to the following Declaration of Protective Covenants (the "Declaration") and amendments to the same:

- a) Book 9939, Pages 2323-2383 on February 27, 2003;
- b) Book 9942, Pages 2764-2766 on February 28, 2003;
- c) Book 11550, Pages 1451-1454 on August 29, 2005; and
- d) Book 11605, Pages 2418-2421 on September 29, 2005.

WHEREAS, the Declaration applies to and runs with the land described in the Plat Books and Pages of the Wake County Register of Deeds, including the following:

- a) Book of Maps 2003, Page 1133;
- b) Book of Maps 2003, Page 1500;
- c) Book of Maps 2003, Page 1803;
- d) Book of Maps 2003, Page 1804;
- e) Book of Maps 2003, Page 1852;
- f) Book of Maps 2004, Page 404;
- g) Book of Maps 2004, Page 905;
- h) Book of Maps 2005, Page 980;
- i) Book of Maps 2005, Page 1744;
- j) Book of Maps 2006, Page 292; and
- k) Book of Maps 2006, Page 1681.

WHEREAS, Article XII § 4 of the Declaration provides that the Declaration may be amended upon the “affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Units,” and such affirmative vote or written consent has been obtained;

WHEREAS, this instrument is executed to provide for the following amendments to Article VII (“Insurance and Casualty Losses”).

NOW, THEREFORE, the Declaration of Protective Covenants for Willow Trace at Cary Park Townhomes is amended to read as follows:

Article VII
Insurance and Casualty Losses

Section 1. Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Property insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

The Association shall maintain, to the extent reasonably available, liability insurance with a combined single limit of at least One Million Dollars (\$1,000,000.00) covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Property. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors’ and officers’ liability insurance.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

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

- (a) All policies shall be written with a company authorized to do business in North Carolina.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if

any, related thereto.

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

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

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

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

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

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

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

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

(vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler

coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

Section 2. Damage and Destruction – Property Insured by Association.

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

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote and the Owner or Owners of any damaged Unit or Units otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

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

Section 3. Damage and Destruction to a Unit. Each Owner further covenants and agrees that in the event of damage or destruction of a Unit or structures on a lot, the Owner shall promptly repair or reconstruct the damaged structure in a manner consistent with the original

construction or such other plans and specifications as are approved in accordance with this Declaration.

All other terms and conditions contained in the Declaration or amendments to the Declaration shall remain unchanged.

This the 06 day of February, 2015.

Willow Trace at Cary Park Townhomes Association, Inc.

By: James Richard Hriso
James Richard Hriso, President,
Willow Trace at Cary Park Townhomes Association, Inc.

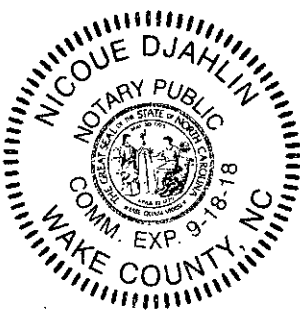
NORTH CAROLINA
WAKE COUNTY

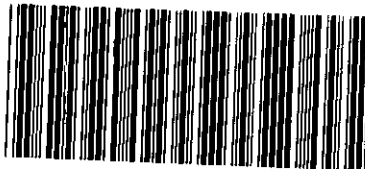
I, the undersigned Notary Public, do hereby certify that James Richard Hriso personally appeared before me this day and acknowledged that s/he is the President of Willow Trace at Cary Park Townhomes Association, Inc., and that s/he has executed the foregoing instrument as its President.

WITNESS my hand and seal this the 06 day of February, 2015.

My commission expires:
09/18/2018

Nicole Djaclin
Notary Public
NICOLE DJACLIN
Printed Name





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