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PRESENTED FOR REGISTRATION

Prepared by and return to:
Charles L. Hinton, III
Law Office of Charles L. Hinton, III
Post Office Box 550
Cary, North Carolina 27512

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEATHERWOOD TOWNHOMES RECORDED IN BOOK OF MAPS 1987, PAGE 1037, WAKE COUNTY REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by Nicholson Homes, Inc., a North Carolina corporation, the "Declarant";

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in the Town of Apex, Wake County, North Carolina, which is more particularly described as:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

WHEREAS, the Declarant desires that the said property become a part of Shepherd's Vineyard Subdivision and Heatherwood Townhomes; and

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the Declaration of Covenants of Shepherd's Vineyard Subdivision recorded in Book 3821, Page 256, of the Wake County Registry, as the same now is or hereafter amended, and to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

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ARTICLE I

DEFINITIONS

Section 1. "Association shall mean and refer to Heatherwood Townhome Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3. "Building" shall mean and refer to a multi-unit structure containing townhomes constructed or erected on the Property.

Section 4. "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 5. "Common area" shall mean and refer to all real property within the Heatherwood Subdivision owned by the Association, along with facilities and improvements erected thereon, for the common use and enjoyment of all members of the Association.

Section 6. "Common expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses for maintenance of the townhomes as provided in this Declaration;

(c) Expenses of administration, maintenance, repair or replacement of the limited common areas;

(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(e) Hazard, liability or such other insurance premiums as the Declaration or Bylaws may require the Association to purchase;

(f) Expenses agreed by the members to be common expenses of the Association.

Section 7. "Declarant" shall mean and refer to Nicholson Homes, Inc., and its successors and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or one otherwise denominated a "Declarant" hereby.

Section 8. "Limited common area" shall mean and refer to all land within the Property owned by the Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the members of the Association as shown on the aforementioned recorded map and the maps of additional properties hereafter annexed as hereinafter provided. Said limited common area shall be maintained by the Association.

Section 9. "Lot" shall mean and refer to any plot of land, other than the common area, shown on a recorded subdivision map of the Property and upon which a townhouse

has been or may be constructed.

Section 10. "Member" shall mean and refer to every person who is a member of the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of an obligation.

Section 12. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation.

Section 14. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a lot within the property and constituting part of a building.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional properties and improvements, including limited common area, may be annexed in the manner provided in this Article to the Property herein described. Additional properties so annexed shall be merged with the Property herein described and any other previously annexed property, and shall be subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for Shepherd's Vineyard Subdivision recorded in Book 3821, Page 256, of the Wake County Registry, and to the provisions of this Declaration and to the Articles of Incorporation and Bylaws of the Association.

Section 2. At any time prior to January 1, 1992, the Declarant, without the consent of Class A members, may annex additional townhome property to the Property herein described, if such additional townhome property is within the boundaries shown on the general plan of Heatherwood Townhomes and/or Shepherd's Vineyard Subdivision as submitted to the Town of Apex, the Veterans Administration, the Federal Housing Administration and other government agencies, providing that the total number of townhomes shall not exceed two hundred (200) lots. All properties annexed shall be within reasonable proximity of the Property herein described or to property previously annexed or shall be within the properties as shown on the plan for Heatherwood Townhome and/or Shepherd's Vineyard development.

Section 3. In addition to annexations as provided in Section 2 of this Article, other contiguous townhome property may be annexed at any time with the express consent of two-thirds (2/3) of each class of members.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the limited common area which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association to limit the number of guests of members.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the limited common area and facilities, upon consent of at least two-thirds of the lot owners excluding Declarant.

(c) The right of the Association to suspend the voting rights (and right to use of any recreational facilities located upon the limited common area) by a member, or any person to whom he has delegated his voting right, for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of owners to the exclusive use of parking spaces as provided in this Article.

(e) The right of the Association to formulate, publish, and enforce rules and regulations as provided in Article X.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers, provided, every such delegee shall reside on the Property.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common areas located in Phase I as shown upon the recorded map referred to in the premises of this Declaration, to the Association, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first lot in each respective Parcel, except utility and drainage easements and easements to governmental authorities, upon condition that such area as shall be designated "limited common area" shall be for the sole and exclusive use and benefit of members, so long as such area is maintained in

conformity with the requirements of this Declaration, the Bylaws, and Articles of Incorporation of the Association, at the sole expense of the owners. Similarly, the Declarant will convey to the Association, upon the same conditions and for the same uses and purposes, common and/or limited common areas which are parts of any additional properties that are annexed by it in the future.

Section 4. Parking Rights. The owner or owners of each lot shall be entitled to the use of not more than two (2) automobile parking spaces (the Association, in its discretion, may designate one (1) space for the use of each member), and the parking space shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking spaces. No boats, trailers, campers or recreational vehicles shall be parked within the limited common area, greenways, lots, or rights of way of any public or private street in or adjacent to the Property. Declarant or its agents shall have access to parking spaces for purposes of sale or display of any townhome, including the sales model.

Section 5. Antennas and Cablevision. The Association may provide cablevision or central television antennas and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of antennas on individual lots. No satellite disks shall be erected without prior approval of and installation by the Association.

ARTICLE IV

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Heatherwood Townhome Association. Ownership of such interest shall be the sole qualification for such membership; no owner shall have more than one membership in each Association and there shall be only one vote per lot in each Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE V

VOTING RIGHTS

Section 1. Classes. The Association shall have the following two classes of voting membership:

(a) Class A. Class A members shall be all owners, other than Declarant; however, Declarant shall be a Class A member to the extent provided in (b) hereinafter. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot the vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided in Article III of this Declaration, or

(2) On January 1, 1992.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Property hereby covenants, and every other owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs

shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; improving and maintaining the Property and the townhomes situated thereon; and providing the services and facilities for purposes of and related to the use and enjoyment of the limited common area and facilities, including but not limited to the waste water collection, treatment and disposal facilities as required by the North Carolina Department of Environmental Management.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. To and including December 31, 1987, the maximum annual assessment shall not be in excess of Five Hundred Fifty Two and No/100 Dollars ($552.00) per lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1987, the maximum annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and Selected Areas for Urban Wage Earners and Clerical Workers, All Items Most Recent Index and Percentage Changes from Selected Dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1. However, in no event shall such increase be greater than twelve percent (12%) in any one year.

(c) Increase by Members. From and after December 31, 1987, the maximum annual assessment may be increased by a percentage greater than that established by the Consumer Price Index formula by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to

any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

(e) Lots Owned by Declarant. Notwithstanding anything in this Article VI to the contrary, all lots owned by Declarant and held for sale shall be assessed at an amount equal to 25% of the actual monthly assessments paid by owners.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be selt to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5. Uniform Rateof Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3, and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the payment of such shall commence as to each lot on the first day of the second month following the issuance of a building permit on said lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum or the maximum lawful rate, whichever is less. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest and costs of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of the first mortgage, any lien for assessments of Ashley Place Homeowners Association, and ad valorem taxes on such lot. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or

non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance of the limited common area and any private streets, driveways and parking areas, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: Stain and/or paint the exterior of townhomes; repair, replace and care for roofs, decks, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences in common areas installed by Declarant or the Association, exterior post lights excluding electricity therefor and other such exterior improvements. Such exterior maintenance shall not include glass surfaces, doors and door frames, exterior lighting or fixtures and outlets attached to the units or detached exterior structures.

Any owner who fences or encloses any portion of his lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects and shall maintain both the interior and exterior sides of the fence as well as the enclosed portion at the owner's expense, provided such maintenance does not hinder the Association in performing its maintenance duties as to the townhome, the remaining yard spaces, or the limited common area. No such maintenance by an owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. The owner shall not plant any vegetation in front of his townhome except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner or his family, tenants, contract purchasers, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, or smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance,

replacement, or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the property and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

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

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

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

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

Section 7. Certification With Respect to Contribution. If any owner desires to

sell his lot, he may, in order to assure a prospective purchaser that no adjoining owner has a right of contribution as provided in this Article request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without charge. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE IX

ARCHITECTURAL CONTROL

No building, fence, wall, antenna, clothesline, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the said improvements or alterations shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or the Board of Directors of the Association or by its Architectural Committee. In the event that the Declarant, the board or the designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Declarant, the Board or the committee can arrive at a decision.

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

ARTICLE X

USE RESTRICTIONS BOOK 4071 PAGE 230

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each lot and the limited common area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each building, the townhomes therein, and the limited common area and facilities shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

(a) All buildings and the limited common area and facilities shall be used for residential and related common purposes. Each townhome may not be subdivided and shall be used as a single-family residence and for no other purpose except that the Declarant may use one or more townhomes owned by it or leased from others for offices and/or model townhomes for sales purposes.

(b) Nothing shall be kept and no activity shall be carried on in any building or townhome or on the limited common area and facilities which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the common area and facilities which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the common area and facilities. All garbage receptables, containers and enclosures shall be located at the rear of the townhome.

(c) No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the property.

(d) Nothing shall be done in or to any townhome or in, to, or upon any of the

common area and the facilities which will impair the structural integrity of any building, townhome, or portion of the common area and facilities or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the property, except that the Declarant or its agents may use any unsold townhomes or lease up to two townhomes for sales or display purposes.

(f) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any townhome, building or any portion of the limited common area and facilities, except as may be allowed by the Declarant or the Association pursuant to its bylaws; provided, however, that the Declarant and any mortgagee who may become the owner of any unit, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied townhomes.

(g) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the limited common area and facilities except at the direction of with the express written consent of the Association.

(h) The limited common area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to the bylaws.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the property.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained; provided, that they are not kept or maintained for commercial purposes and provided further that they are kept in the townhome of the Owner. Further, no pens, runs or pets houses shall be allowed on any lot, on any limited common area, or on the common area.

ARTICLE XI

EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the property,

including lots and limited common area, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress and to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the property to this Declaration by the Declarant or its predecessors in title and for the use of the Owner, their families, guests and tenants; and the Heatherwood Townhome Association shall have the power and authority to grant and to establish in, over, upon, and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property and Heatherwood Townhome Subdivision.

Section 2. Encroachments. All lots and the limited common area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, fences, and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 3. Structural Support. Every portion of a townhome which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other townhomes within the building.

Section 4. Emergencies. Every lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any lot or within any townhome and that endangers any building or portion of the limited common area and to do other work reasonably necessary or useful for the proper maintenance of Heatherwood Townhomes.

ARTICLE XII

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Amendments or Abandonment. The prior written approval of each institutional holder of a first deed of trust on units in the property will be required for the following:

(a) The abandonment or termination of the townhome property except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Any material amendment to the Declaration or to the By Laws of the Association.

Section 2. Professional Management. Professional management of the Association is selected by Declarant for the period during which Declarant maintains voting control of the Association. Following the transfer of voting control to the owners pursuant to Article V, professional management of the Association shall be continued by the owners. Self-management of the Association by the owners is allowed only with the prior written consent of each institutional holder of a first deed of trust on any lot or properties within Heatherwood Townhome Subdivision.

Section 3. Subdivision of Units. No unit may be partitioned or subdivided without the prior written approval of the first lien holder of the unit.

Section 4. Inspection and Notice. Upon written request, any institutional holder of a first lien on a unit will be entitled to:

(a) inspect the books and records of the Association, current copies of the declaration, bylaws and other rules concerning Heatherwood during normal business hours;

(b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year; and

(c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(d) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association.

(e) written notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

(f) written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage.

Section 5. Notice and Default.

(a) In the event of substantial damage to or destruction of any unit or any part of the limited common area, the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such damage or destruction.

(b) If any unit or portion thereof or the limited common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institution holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition.

(c) The holder of a first mortgage on any unit shall be given prompt notice of any default by the unit mortgagor's obligations hereunder not cured within thirty (30) days of said default provided that the holder shall have given notice to the Association that it is a holder as to the lot of such mortgagor and shall have requested the notice of default as herein set forth.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety percent (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy five percent (75%) of the lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing, or repro-

duction. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration. Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Lease of Townhouse. No townhome shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and the occupancy of the unit shall be subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions and Bylaws of Heatherwood Townhomes. Any failure by any lessee to comply with the terms of such documents shall be a default under the lease.

Section 6. Conflicts. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in their respective names by authority duly given.

NICHOLSON HOMES, INC., a
North Carolina corporation (SEAL)

By: James M. Nicholson
President

ATTEST:

~~(Assistant)~~ Secretary

BOOK 4071 PAGE 139

NORTH CAROLINA - WAKE COUNTY

I, Arlene F. Livengood, a Notary Public in and for said State and County, do hereby certify that Charles L. Hinton, III personally appeared before me this day and acknowledged that he is (~~Assistant~~) Secretary of NICHOLSON HOMES, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, James M. Nicholson, sealed with its corporate seal and attested by him self as its (~~Assistant~~) Secretary.

WITNESS my hand and notarial seal this the 24th day of July, 1987.

ARLENE F. LIVENGOOD
NOTARY PUBLIC
WAKE COUNTY, N. C.
My Commission Expires 2-20-87

Arlene F. Livengood
Notary Public

My commission expires:

(A606a)

EXHIBIT A

BEING all of Heatherwood,
a Townhome Development
Shepherd's Vineyard Subdivision
As shown on map recorded in
Book of Maps 1987, Page 1037,
Wake County Registry.

CONSENT OF MORTGAGEE

Peoples Bank and Trust Company, as the holder of promisssory notes secured by Deeds of Trust on the property described in Exhibit A hereof, said Deeds of Trust being recorded in Book 3853, Page 56, Book 3958, Page 748, Book 3958, Page 754, and Book 4067, Page 939, all of Wake County Registry, and Robert R. Levine as Trustee under the Deeds of Trust, join in the execution hereof for the purpose of subjecting the aforesaid Deeds of Trust to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for Heatherwood Townhomes.

PEOPLES BANK AND TRUST COMPANY

(CORPORATE SEAL)

By D. Michael Roberts
Vice President

ATTEST:
Rebecca H. Osborne
Asst. Secretary

Robert R. Levine (SEAL)
Trustee

STATE OF NORTH CAROLINA - COUNTY OF Johnston

I, Pam Parrish, a Notary Public in and for said state and county, do hereby certify that Rebecca H. Osborne personally appeared before me this day and acknowledged that he is (Assistan)t Secretary of PEOPLES BANK AND TRUST COMPANY, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its (Vice) President, D. Michael Roberts, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

WITNESS my hand and notarial seal this the 22nd day of July, 1987.

Pam Parrish
Notary Public

My commission expires: My Commission Expires March 23, 1992

NORTH CAROLINA - WAKE COUNTY

I, Pam Parrish, Notary Public of said state and county, certify that Robert R. Levine, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 22nd day of July, 1987.

Pam Parrish
Notary Public

My commission expires:

(B:A606a(i) My Commission Expires March 23, 1992

NORTH CAROLINA — WAKE COUNTY
The foregoing certificate S of Pam Parrish
Arlene J. Livengood
Notar(y)(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof

KENNETH C. WILKINS, Register of Deeds

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