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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
HERITAGE PINES COMMUNITY ASSOCIATION, INC.**

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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE
HERITAGE PINES COMMUNITY ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by **HERITAGE PINES, LLC**, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of approximately 96 acres of land located in the Town of Cary, Cedar Forks Township, Wake County, North Carolina, more fully described in the deed recorded in Book 8209, Page 752, Wake County Registry;

WHEREAS, Declarant desires to create on such property an exclusive residential community of single-family homes to be known as HERITAGE PINES (hereinafter sometimes referred to as "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the common area within the Subdivision and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area (as hereinafter defined), to administer and enforce covenants and restrictions applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the HERITAGE PINES COMMUNITY ASSOCIATION, INC., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in Section 1 of Article II of this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the **HERITAGE PINES COMMUNITY ASSOCIATION, INC.**, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Builder" shall mean and refer to any persons, firms or entities to whom or which Declarant conveys one or more Lots within the Properties for the purpose of constructing a Dwelling thereon. As of the date of recording of this Declaration, the Builder is the Declarant.

Section 3. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Subdivision, including, without limitation, open space, recreational facilities, pedestrian access easements, sign and landscape easements and buffers, and water, sewer and storm water drainage easements, and the facilities constructed therein, which easements and facilities serve more than one Lot and are not located within a public easement or public street right-of-way. Except as otherwise provided in this Declaration, the Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein.

Section 4. "Declarant" shall mean and refer to **HERITAGE PINES, LLC**, a North Carolina Limited Liability Company. It shall also mean and refer to any person, company or entity to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any public street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of new subdivision plats, any newly-platted Lot shall thereafter constitute a Lot.

Section 6. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 8. "Properties" shall mean and refer to the "Existing Property" described in Exhibit A to this Declaration and any additional property annexed pursuant to Article II of this Declaration.

Section 9. "Subassociation" shall mean and refer to any homeowners association formed for the purpose of owning and maintaining real property and improvements thereon reserved for the exclusive use and benefit of Owners of Lots or Units within a specific phase or section of the Properties.

Section 10. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use an occupancy as a residence by a single family, whether by the Owner of such Unit or by tenants or lessees of such Owner.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
HERITAGE PINES COMMUNITY ASSOCIATION, INC.

Section 1. Master Plan. A Master Plan for the development of the Subdivision has been prepared by Declarant and approved by the Town of Cary and is available for review at the offices of the Town of Cary or, upon written request, from the Declarant. The Master Plan may be modified by the Declarant, in whole or in part, at any time, or discontinued, in the Declarant's sole discretion, subject only to the approval of the Town of Cary, if such approval is required.

Section 2. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration as of the date of recording hereof, and which is within the jurisdiction of the Association, is described on Exhibit A attached hereto.

Section 3. Annexation of Additional Property. At any time prior to December 31, 2025, additional land within the property described in Exhibit B attached hereto and made a part hereof (the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Furthermore, at any time Declarant owns any Lot within the Properties, additional land not within the Exhibit B Property may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Any property annexed must be contiguous to property already subject to this Declaration and must be approved by the Town of Cary. Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

A supplementary declaration may contain such complementary additions to and modifications of the covenants and restrictions contained in this Declaration, including, without limitation, different voting rights and different annual and special assessments for the Lots or Units so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added. In no event, however, shall any supplementary declaration revoke, modify or add to the covenants and restrictions established by this Declaration so as to materially and adversely affect any portion of the Properties already subject to this Declaration. A supplementary declaration annexing additional property need only be executed by the Declarant and, if applicable, by the owner of the property being annexed, and shall not require the joinder or consent of the Association or any of its Members.

Nothing contained in this Article shall be construed to obligate or require Declarant to make any additions to the Properties.

Section 4. Conveyance of Common Area in Annexed Property. Promptly upon request of Declarant, the owner of the annexed property shall convey any or all Common Area located within the newly annexed property to the Association or, if requested by the Declarant, to the Declarant. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 5. Merger. Additional property may also be made subject to this Declaration by merger or consolidation of the Association with another non-profit corporation formed for the same or similar purposes. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties and the covenants and restrictions established upon property owned by the other association as one scheme.

Section 6. Effect of Addition of Property. Except by amendment of this Declaration as provided in Section 3 of Article XII hereof, no addition of property, whether by annexation, merger or consolidation, shall revoke or modify any provision of this Declaration as to the Properties already subject hereto or diminish the rights of the Owners of Lots and Units within the Properties, except for the dilution of voting strength that occurs as a result of inclusion of additional Members of the Association.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots and may not be separated from ownership of any Lot.

There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner of such Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant or a Builder and which have not been converted to Class A Lots as set forth below. Declarant and each Builder shall each be entitled to nine (9) votes for each Class B Lot it owns.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur: (i) when Declarant no longer owns any Lots or Units within the Properties; (ii) upon written waiver of Class B membership by the Declarant and/or Builder; or (iii) December 31, 2025. When the Class B Lots cease to exist and are converted to Class A Lots, Declarant and Builder shall have the same voting rights as other Owners of Class A Lots.

(c) Declarant's Voting Rights. Until the Class B Lots cease to exist, as provided above, Declarant shall be vested with the sole voting rights of the Association on all matters (including election of directors of the Association), except such matters as to which the Declaration, the Articles of Incorporation, or the Bylaws of the Association specifically require a vote of the Class A Members.

Section 3. Leased Units. Notwithstanding any other provision of this Declaration or the Bylaws of the Association, the vote as expressed by the Owners of Lots or Units which are leased or rented to or otherwise occupied by person(s) other than the Owner shall not be entitled to any weight greater than forty-nine (49) percent on any matter pending before the Association.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by the provisions of this Section 1 and by the rules and regulations adopted by the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. After Class B Lots cease to exist, no such dedication or transfer shall be effective unless the Members entitled to at least 80% of the votes of the entire membership of the Association and at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed document recorded in the Wake County Registry. Nothing herein shall be deemed to prohibit the Board of Directors of the Association, without consent of the Members, from granting easements over and across the Common Area to any public agency, authority or utility for the installation and maintenance of sewerage, utility (including cable television) or drainage facilities when, in the opinion of the Board, such easements are

necessary for the convenient use and enjoyment of properties within the subdivision. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to the Town of Cary or another non-profit corporation organized for similar purposes;

(d) the right of the Association, to borrow money and, after Class B Lots cease to exist, with the assent of Members entitled to at least 80% of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as set forth herein;

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that, after Class B Lots cease to exist, any such dedication shall require the assent of the Members as set forth in subparagraph (c) above, and further provided that, if the Board of Directors of the Association determines, in its sole discretion, that such exchange is necessary to cure an encroachment or setback violation on any Lot, the Board may effect such exchange without the consent of or approval by the Members;

(f) the right of the Association to open the Common Area and, in particular, the recreational facilities constructed thereon, for use by non-members of the Association.

(g) the right of the Association to expand or add to the Common Area and to improve, maintain and operate the Common Area.

(h) the right of the Association to adopt, promulgate and enforce rules and regulations concerning the use of the Common Area.

(i) the right of the Association to otherwise deal with the Common Area as provided in the Articles of Incorporation and Bylaws of the Association.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants; Contract Purchasers. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

(d) Suspension of Rights. The rights of any delegate of an Owner shall be suspended by, upon and during suspension of such Owner's rights as provided in Section 7 of Article XII of this Declaration.

Section 3. Conveyance of Common Area To The Association. No later than the time Declarant no longer exercises voting control over the Association as provided in Article III hereof, Declarant shall convey, and the Association shall accept, fee simple title to all Common Area (except Common Area easements) within the Properties, and shall reserve for or grant to the Association all Common Area easements, all subject to such easements, reservations conditions and restrictions as then may be of record, and the Association shall accept all such conveyances, grants and reservations, provided, however, that so long as Declarant owns any Lots within the Properties, Declarant reserves an easement over and across any Common Area deeded to the Association for the purpose of constructing and maintaining any improvements on the Common Area as it deems necessary or advisable, provided that any such improvements must comply with the requirements of the Town of Cary. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of the Declarant that the Common Area be preserved to the perpetual benefit of the Owners.

(a) Regulation of Common Area. The Association may adopt and promulgate rules and regulations governing the use of the Common Area by Owners and their family, guests and invitees. No Owner or other permitted user shall use the Common Area or any portion thereof in violation of the rules and regulations contained in this Declaration or subsequently adopted by the Association.

Without limiting the generality of the foregoing, no Owner or tenant, guest or invitee of an Owner shall, without the specific prior written consent of the Association: (i) damage or waste the Common Area or improvements thereon or remove any trees or vegetation therefrom; (ii) erect any gate, fence, structure or other improvement or thing on the Common Area; (iii) place any garbage receptacle, trash or debris on Common Area; (iv) fill or excavate any part of the Common Area; (v) landscape or plant vegetation on Common Area; or (vi) use the Common Area or any part thereof in a manner inconsistent with or in any way interfering with the rights of other Owners.

(b) Rights and Responsibilities of the Lot Owners as to Common Area Easements. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area easement.

(c) Rights and Responsibilities of the Association as to Common Area. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, subject to the provisions of this Declaration; (ii) procure and maintain adequate liability insurance covering the Association and its Members, Directors and officers, against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area, and adequate hazard insurance covering the real and personal property owned in fee by the Association; and (iv) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(d) Declarant's and Association's Right of Entry. The Declarant and the Association and the employees, agents, contractors and subcontractors of each, shall have a non-exclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement for the purposes of: (i) installing and maintaining subdivision entrance signs, features, fencing and landscaping; and (ii) making such improvements to the Common Area; and (iii) maintaining the Common Area easement in its natural or improved state.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 9 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge against and, as provided in Section 47F-3-116 of the North Carolina Planned Community Act, a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to the Bylaws of the Association or Section 7 of Article XII of this Declaration shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) repair and reconstruction of improvements on

the Common Area, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) cutting and edging of grass on the Lots; (iv) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (v) procurement and maintenance of insurance in accordance with the Section 4(c) of Article IV of this Declaration; (vi) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Annual Assessments.

(a) Maximum Annual Assessment. For purposes of annual and special assessments, Declarant will subdivide the Class A Lots into two subclasses, i.e., Class A-1 (the Villas) and Class A-2 (the Garden Homes). As provided in Section 2(a) of Article III hereof, Declarant shall establish the Maximum Annual Assessment and initial annual assessment for each subclass; thereafter, the terms "Maximum Annual Assessment", annual assessment, and special assessment shall mean the Maximum, annual and special assessments applicable to each subclass, and the term "Class A" shall be construed to include each subclass of the Class A Lots. Until January 1, 2001, the Maximum Annual Assessment shall be \$1,300.00 for each Class A-1 Lot and \$1,360.00 for each Class A-2 Lot.

From and after January 1, 2001, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Members, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

From and after January 1, 2001, the Maximum Annual Assessment for Class A Lots may be increased without limitation if such increase is approved by a majority of the votes cast, in person or by proxy, at a meeting duly called for that purpose.

(b) Annual Assessments; Ratification of Budgets. The Board of Directors shall adopt a proposed budget (including the proposed annual assessment for each Class of Lots) at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as required by Section 7 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Any annual assessment ratified by the Members shall continue thereafter from year to year as the annual assessment until changed by the Board and ratified by the Members as set forth herein.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate; Collection Period. Except as provided in Section 6 of this Article V, the annual and special assessments shall be fixed at a uniform rate for all Lots within each subclass of Lots and may be collected on a yearly, semi-annually, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Declarant's and Builder's Assessments. Notwithstanding any other provision of this Declaration, the Articles of Incorporation or the Bylaws of the Association, the Declarant shall not be obligated for, nor subject to, any annual or special assessment for any Lot or other property that it owns within the Properties, provided, however, that the Declarant shall be responsible for paying the difference between: (i) the operating expenses of the Association; and (ii) the total operating revenues of the Association from all sources including, without limitation, annual and special assessments, revenues generated from fees charged by the Association for use of the Common Area, and investment income (said difference being hereinafter referred to as the "Operating Deficit"). For purposes of this Section, the term "operating expenses" shall not include contributions to any reserves for replacement, operating reserves, depreciation reserves, capital expenditures, or special assessments.

Declarant may, by written notice given by the Declarant to the Association on or before November 30 of any year, to be effective as of January 1, terminate its obligation to pay the Operating Deficit and waive its right to exclusion from assessments. In such event, each Lot owned by the Declarant which contains a Dwelling for which a certificate of occupancy has been issued shall be assessed at the twenty-five percent (25%) of the annual assessment in effect for Class A Lots, as the same may change from time to time. Upon sale of such Lot by Declarant to any other person or entity, such Lot shall be assessed at Class A rate, commencing on the first day of the month after title to such Lot is transferred to such third party. Notwithstanding any other provision of this Declaration, a Lot owned by the Declarant which contains a Dwelling occupied as a residence (but not as a model or sales center) shall be assessed at the rate applicable to Class A Lots.

The Declarant, at its option and upon such terms and conditions as Declarant may impose, including, without limitation, the obligation to pay any Operating Deficit, may extend Declarant's exclusion from assessments to any Builder, in which event such Builder may exercise the rights and shall have the obligations of Declarant set forth in the immediately preceding paragraph, and, in such event, any reference to Declarant in this Section 6 shall be deemed to apply to any such Builder.

So long as the Declarant or a Builder is obligated to pay any Operating Deficit, the Association, at the request of Declarant and upon such terms as the Declarant may require, shall open the Common Area and, in particular, the recreational facilities thereon, for use by non-members of the Association (including the general public) and shall grant any easement or license necessary for access to and from and for parking at or near such facilities.

Section 7. Notice and Quorum for any Action Authorized Under Sections 3(a) and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(a) or 4 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast sixty (60%) percent of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the conveyance of a Lot or Unit within that phase to an Owner other than the Declarant or a Builder. Unless a lower amount is set by the Board of Directors and ratified by the Members, the first annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 9. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, reasonable attorneys' fees, and the costs of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of a Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessment which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 11. Exempt Property. All property dedicated to and accepted by a public authority and all property 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. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Initial Capital Contribution. At the time of closing of each sale of a Dwelling, including the initial sale of same, a sum equal to one-third (1/3) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Dwelling and transferred to the Association as part of its working capital. The purpose of such working capital contributions is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular or special assessment.

ARTICLE VI RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent, shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this subsection. Nothing herein shall be deemed to prohibit the Association from exchanging Common Area for other real property of like utility and value as provided in Section 1(c) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The owners or holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE VII EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve or grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of thirty (30) years from the date hereof, Declarant reserves, for itself and its employees, agents, successors and assigns, an easement upon and a right of ingress, egress and regress on, over and under the Properties for the purposes of constructing and maintaining water, sewer, gas, storm water drainage and retention, telephone, cable television, and electric, and other utility facilities to the

extent required by any applicable governmental entity or deemed by the Declarant to be necessary or convenient for the development, use and enjoyment of the Properties and the Common Area and for the conduct of construction, sales and marketing activities. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to each Owner whose Lot is affected.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot within the Properties for the benefit of applicable governmental agencies for installing, removing, and reading water meters, maintaining and replacing water and sewer facilities, and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such Dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which existed prior to the commencement of the work as is reasonably practicable. No fence shall be erected within such area adjoining a Dwelling.

Section 4. Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over the each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association.

Section 5. Easement Over Common Area. An perpetual, non-exclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from streets, parking areas and walkways serving the Properties.

ARTICLE VIII ARCHITECTURAL CONTROL

The Declarant shall have the sole and absolute right to determine the style and appearance of the Dwellings, fences, walls, buildings, outbuildings, garages, storage sheds, mailboxes, lawn decorations, structures of any type, grading, landscaping and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements").

After occupancy of a Dwelling as a residence pursuant to a certificate of occupancy or other similar certificate issued by the Town of Cary, no Improvements (including, without limitation, replacement of any previously existing Improvements) shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made (including, without limitation, changing materials or color of any exterior portion of any such Improvements), nor shall a building permit for such Improvements or change be applied for or obtained, nor shall any landscaping or relandscaping of any Lot be commenced or made until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Association or by an Architectural Review Committee ("ARC") composed of three or more persons appointed by the Board of Directors of the Association. If the Association or its designee fails to approve or disapprove such proposed Improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Association shall have the right to charge a reasonable fee, not to exceed \$100.00, for receiving and processing each application.

The Declarant and, after the Declarant no longer owns any Lot or Unit within the Properties, the Association, shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Neither the Association nor the ARC shall approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Neither the Declarant, the Association, the Board of Directors, the ARC, nor any member or employee of any of them, shall have any liability to any person or entity by reason of any acts taken or omitted by them, or any of them, in good faith pursuant to this Article.

ARTICLE IX PARTY WALLS

Section 1. General Rules of Law to Apply. The general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and placed on the dividing line between the Lots, and all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

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 or which uses 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 Owners 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. 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 and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements.

Section 6. 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 7. Certification by Adjoining Property Owner That No Contribution Is Due. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of a dispute concerning a party wall or the provisions of this Article, such dispute shall be resolved pursuant to the provisions of Section 8 of Article XII hereof.

ARTICLE X RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 1. Responsibilities. The Association, subject to the rights of the Owner set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep the Common Area in good, clean and proper condition, order and repair. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration and management of the Common Area and the performance of its other obligations hereunder. The Association shall operate and maintain areas designated by the Declarant as Common Areas, whether or not title to such areas has been formally conveyed to the Association. The Association shall also be responsible for enforcement of the covenants and restrictions contained in this Declaration.

Section 2. Manager. The Association may employ and pay for the services of a person or entity, including the Declarant (the "Manager"), to assist the Association in managing its affairs and carrying out its responsibilities hereunder and such other persons or entities, including attorneys and accountants, as the Association deems necessary or advisable, whether such persons or entities are engaged, furnished or employed by the Manager or directly by the Association. The Association may enter into a Management Agreement for such management services upon such terms as the Board of Directors may deem appropriate. The payment of management fees due to the Declarant may, at Declarant's option, be deferred until such later date as Declarant, in its sole discretion, deem appropriate. Furthermore, any management fees due to Declarant may, at Declarant's option, be credited against any assessments due or to be coming due from the Declarant.

Section 3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Articles of Incorporation or Bylaws of the Association.

Section 4. Insurance; Bonds. The Association shall procure and maintain adequate liability insurance covering the Association. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance, and such other insurance as it deems necessary or advisable. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration. The Association may cause any or all persons responsible for collecting and disbursing monies of the Association to be bonded.

Section 5. Implied Rights. The Association may exercise any other right or privilege and take any action authorized by this Declaration, the Association's Articles or Bylaws, or the North Carolina Non-Profit Corporation Act, as from time to time amended, and every other right or privilege reasonably necessary to effectuate the exercise of any right or privilege or the taking of any action authorized herein or therein.

Section 6. Declarant's Reserved Rights; Association's Obligation of Cooperation. The Association shall accept conveyance of any Common Area conveyed to it, in fee or by easement, by Declarant or, at the request of Declarant, by an owner of any property within or to be annexed into the Properties and, upon request of Declarant and without further consideration, shall execute any document necessary to evidence such acceptance.

Until such time as Declarant and Builders have completed all of the contemplated improvements and have sold all of the Lots within the Subdivision:

(a) Declarant shall have the right to alter the boundaries of the Common Area, whether or not it has been previously deeded to the Association, provided that such alteration does not substantially, materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoints the Declarant as his attorney-in-fact to execute and/or deliver any documents, plats, deeds, or other written matters necessary or convenient to accomplish the addition of

Common Area or Properties, or both, to create easements as deemed necessary by Declarant, and to adjust the boundary or boundaries of the Common Area.

(b) Neither the Association nor its Members, nor the use of the Common Area by the Association and its Members, shall interfere with or impede the completion of the improvements or the marketing and sale by the Declarant and the Builder of Lots and homes.

(c) Declarant and each Builder shall have the right to make such use of Lots and the Common Area as may facilitate completion of development and sale of Lots and Units by the Declarant and the Builder. Without limiting the foregoing, Declarant shall have the right to maintain or permit the Builder or others to maintain sales offices, model Dwellings and Units, administrative offices, and construction offices (which may be trailers or temporary or permanent buildings), or any or all of same, on Lots or the Common Area. Declarant and the Builder shall also have the right to erect and maintain signs on Lots and/or the Common Area, to bring prospective purchasers upon the Common Area, to use the Common Area for sales and marketing activities for the Subdivision, to grant the right to use the Common Area to a prospective purchasers or any other individual or group, in Declarant's sole discretion, and to conduct any and all other marketing activities deemed appropriate by the Declarant, and to permit the Builder and others to exercise such rights in conjunction with or separate from the Declarant.

(d) Subject to the provisions of Section 1(d) of Article IV of this Declaration, Declarant shall have the right, but not the obligation, to loan money to the Association in such amounts and upon such terms and conditions as to which the Declarant may agree. Payments due to the Declarant under any such loans may, at Declarant's option, be credited against any assessments coming due at any time from the Declarant.

(e) In addition to all other rights of the Declarant, no amendment shall be made to this Declaration, and no rule or regulation shall be adopted, interpreted or enforced by the Association, so as to modify the assessments or other charges applicable to the Declarant or a Builder or assessed against the Lots owned by either, or which shall restrict, impair, or, in Declarant's sole judgment, materially adversely affect the activities of the Declarant or the Builder with regard to construction, use of Common Area and delegation of the right to use the Common Area, or the marketing and sale of Lots by the Declarant and Builder, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

In exercising any of the rights provided or granted under this Article X, neither Declarant, nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the Town of Cary as of the date of this Declaration.

ARTICLE XI USE RESTRICTIONS

Section 1. Business Use Prohibited. No trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, the Builder, real estate brokers, Owners and their agents may show Lots for sale or lease. Notwithstanding the foregoing, the Declarant and each Builder and the agents and employees of each, shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain fluorescent-lighted or spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant or Builder deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Section 2. Use of Accessory Structures. No tent, shack, barn, utility shed, or other building, other than a Dwelling and its garage, shall be erected on a Lot, and used temporarily or permanently as a residence, nor shall any such structure be used for any other purpose. Notwithstanding the foregoing, the Declarant and, with the approval of the Declarant, a Builder, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation, the Dwelling. No Owner shall change the exterior design or color of the Dwelling on such Owner's Lot, including the roof thereof, except in compliance with Article VIII hereof.

Section 4. Storage; Clothes Hanging. No Lot or Common Area shall be used for the storage of rubbish. Outside clothes hanging devices shall not be permitted.

Section 5. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted within the Properties other than in a garage and concealed from public view.

Section 6. Lawns. Each Lot on which there is a completed Dwelling shall be maintained in a neat condition by the Owner thereof or, as appropriate, the Association or a Subassociation. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. All improved Lots must have grass lawns; no gravel or similar type lawns are permitted. No above-ground swimming pools, tool sheds or shacks, dog or other animal pens or houses or the like, and no unsightly lawn furniture or decorations shall be permitted in such lawn areas. No landscaped mounds or other landscaping improvements that would impede lawn maintenance shall be permitted on a Lot without the prior written consent of the Declarant or the Association.

Section 7. Failure to Maintain. If an Owner fails to maintain the Lot or the improvements thereon, the Association or the appropriate Subassociation, after giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at the Owner's expense. By accepting title to his Lot, each Owner shall be deemed to grant access upon the Owner's Lot and Dwelling for such purpose and such entry shall not constitute a trespass. If such maintenance is undertaken by the Association, Subassociation or Declarant, the charge therefor and all costs of enforcement and collection shall be secured by a lien against the Lot as provided in Article V hereof.

Section 8. Age Restriction. At least eighty percent (80%) of the occupied Units shall be occupied by at least one person who is 55 years of age or older, and all permanent occupants must be at least 18 years of age or older. A "permanent occupant" shall be defined as a person who occupies a Dwelling for more than eight (8) weeks in any calendar year.

A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of an occupant 55 years of age or older will be allowed to remain as an occupant.

No Owner who is a Class A Member may rent or sell a Unit unless at least one person who will occupy the unit is 55 years of age or older. The Board of Directors shall have the right to require prior age verification from all prospective occupants.

Notwithstanding anything to the contrary contained herein, the Developer and Builder shall have the right, but not the obligation, to sell Units in which there will be no occupant who is 55 years of age or older, provided that such sales do not conflict with any federal, state or local law.

The Declarant and, after the Declarant no longer has voting control of the Association, the Association, shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of common facilities by, persons under 18 years of age.

Section 9. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are kept within the residence and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or having custody of an animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling.

Section 10. Signs. No signs shall be displayed on any Lot with the exception of one "For Sale" or "For Rent" sign not exceeding 36" x 24" in size and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written

consent of the Association. Notwithstanding the foregoing, Declarant and, with the consent of and upon such conditions as Declarant, in its sole discretion, might impose, a Builder shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area, in connection with the development and sale of the Properties.

Section 11. Water Retention Areas. The Association shall be responsible for maintaining the portions of the storm water drainage system which are within the Common Area, including the water quality and quantity standards of the approved plans, to the extent required by law. A drainage easement is hereby dedicated to the Association for the purpose of maintaining the storm water system to meet water quality and quantity design standards of the approved plans and any future governmental laws, rules or regulations.

Each Owner of a Lot which borders a water retention area shall maintain any portion of that Owner's Lot lying within a retention area free of debris but shall not remove any wetlands species or do anything that would affect adversely water quality within the water retention area.

Swimming and bathing in water retention areas are prohibited. Docks or other structures shall not be erected in water retention areas without the prior written consent of the Association. All other uses of water retention areas shall be subject to the prior written approval of the Association and such rules and regulations as the Association may adopt from time to time.

Section 12. Vehicles, Boats and Trailers. No vehicle of any kind shall be parked on any Lot except on a paved parking surface or driveway or within a garage. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business) and no trailer (except boat trailers and camper trailers) may be parked within the Properties. Boats, boat trailers, campers, travel trailers, recreational vehicles or other similar vehicles, and any vehicle not in operable condition and validly licensed, may be kept on a Lot if kept inside a garage and concealed from public view. For the purpose of the preceding sentence, the term "kept" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less.

Section 13. Antennae and Roof Structures. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is

integrated with the Dwelling and surrounding landscape; and (iv) is approved by the Association pursuant to Article VIII hereof.

Section 14. Leased Units. An Owner may lease or sublet his Unit; provided, however, that any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions And Restrictions For The Heritage Pines Community Association, Inc., recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association a copy of any leases or subleases of his Unit.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by 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 an 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 way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. For so long as Declarant owns any Lot or Unit within the Properties, this Declaration may be amended by the Declarant, without the consent or joinder of any other Owner or the Association. Any such amendment shall be effective upon recording of same in the Wake County Registry. No amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of such amendment has provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Properties and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of the Owners as set forth below.

Subject to the provisions of Section 8(e) hereof, this Declaration may be terminated or amended during the first twenty-five year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots, provided, however, that so long as there is Class B membership, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in

writing by the Declarant. Amendment or termination shall be by written instrument signed by the appropriate persons or entities and recorded in the Wake County Registry and, upon recordation, shall be binding on all Lots and Units within the Properties and the Owners thereof, without regard to whether the Owner of such Lot voted for or against or signed or did not sign the amendment.

Section 4. Interpretation. Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the word "including" shall mean "including, without limitation". This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of the Declarant and, if required, by the Town of Cary.

Section 6. Declarant's Right To Change Development. With the approval of the Town of Cary, and subject only to such terms and conditions as the Town of Cary may impose, Declarant shall have the right, without consent or approval of the Owners, to create Lots and Units, add Common Area, and reallocate Lots or Units within the Properties.

Section 7. Rules and Regulations; Enforcement. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under the Bylaws and this Declaration, the Association may impose sanctions for a violation of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, and any restrictive covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, without limitation, reasonable monetary fines, which shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use the Common Area any facilities thereon.

In addition, as provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies,

if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 8. Dispute Resolution.

(a) Consensus for Association Action.

(1) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the Members. The foregoing shall not apply to: (i) actions brought by the Association to enforce the provisions of this Declaration, the Bylaws, or rules and regulations adopted by the Association (hereinafter collectively referred to as the "Governing Documents"); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to *ad valorem* taxation; or (iv) counterclaims brought by the Association in proceedings against it.

(2) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including, without limitation, a proceeding based on an alleged defect in any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to have access to inspect and correct the condition of or redesign any portion of any improvement as to which a defect is alleged or to otherwise correct or resolve the dispute.

(b) Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents, the Association, its officers, directors and committee members, all Owners, Members, any Builder, its officers, directors, employees and agents, and any other person or entity not otherwise subject to this Declaration who agrees to submit to this Section 8 (each such person or entity being herein referred to as a "Bound Party" or, in groups, as the "Bound Parties") each agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances and disputes described in Subsection (c) hereof (herein referred to as the "Claims") to the procedures set forth in Subsection (d) hereof.

(c) Claims. Unless specifically exempted below, all Claims between any of the Bound Parties, regardless of how such Claims might have arisen or on what they might be based, including, but not limited to, Claims: (i) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (ii) relating to the design and construction of improvements; or (iii) based on any statements,

representation, promises, warranties, or other communications alleged to have been made by or on behalf of any Bound Party, shall be subject to the provisions of Subsection (d) hereof.

Notwithstanding the foregoing, unless all parties to any such dispute otherwise agree in writing, the following shall *not* be deemed to be Claims covered by this Subsection (c) and shall *not* be subject to the provisions of Subsection (d):

(1) any proceeding by the Association against any Bound Party to enforce the provisions of Article V of this Declaration;

(2) any proceeding by the Association or the Declarant to obtain a temporary restraining order or injunction (or equivalent equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the *status quo* and preserve the Association's or the Declarant's ability to act under and enforce the provisions of Articles VIII and XI of this Declaration;

(3) any proceeding between or among Owners, which does not include the Declarant, a Builder, or the Association as a party, if such proceeding asserts a Claim which would constitute a cause of action independent of the Governing Documents; or

(4) any proceeding in which no Bound Party is an indispensable party.

With the consent of all parties thereto, any dispute involving any of the foregoing excepted actions may be submitted to the alternative dispute resolution procedures set forth in Subsection (d).

(d) Mandatory Procedures.

(1) Notice. Any Bound Party having a Claim (the "Claimant") against any other Bound Party (the "Respondent") (the Claimant and the Respondent being herein individually referred to as a "Party" and collectively as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) the nature of the Claim, including the persons or entities involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific provisions of the Governing Documents or other authority out of which the Claim arises);
- (iii) the proposed remedy; and
- (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(2) Negotiation and Mediation.

- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board of Directors of the Association may appoint a representative to assist the Parties in their negotiations.
- (ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other time period as may be agreed upon by the Parties), Claimant shall have an additional 30 days in which to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.
- (iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge the Respondent from any liability to any person or entity other than the Claimant.
- (iv) Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to AAA mediation, or within such other time as may be determined by the mediator or agreed to by the Parties, the mediator shall issue a written notice of termination of the mediation process, which notice shall state that the Parties are at an impasse and set forth the date that mediation was terminated (hereinafter "Termination of Mediation").
- (v) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees and expenses of the mediator and the administrative fees of mediation. If the Parties agree to a resolution of a Claim through negotiation or mediation as set forth in this Subsection (d), and any Party thereafter fails to abide by the terms of the settlement agreement, any other Party may file suit or initiate arbitration proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Subsection (d). In such event, the Party taking action to enforce the agreement shall be entitled to recover

from the non-complying Party (or, if more than one Party is in non-compliance, from all non-complying Parties pro rata) all costs incurred by such Party in enforcing the agreement, including, without limitation, attorneys' fees and court costs.

(3) Binding Arbitration.

- (i) After Termination of Mediation, Claimant shall be entitled to submit the Claim to final, binding arbitration under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. No Claim subject to this Subsection (d), whether by the provisions thereof or by agreement of the Parties, shall be submitted to or decided by or in a court of law. Any judgment upon the award entered by the arbitrator may be entered in and enforced by a court of competent jurisdiction. If the amount claimed by the Complainant or, by the Respondent in a counterclaim, exceeds \$250,000, the Claim shall be heard and determined by three arbitrators. Otherwise, unless the Parties otherwise agree, the Claim shall be heard and determined by one arbitrator. An arbitrator shall have expertise in the area(s) of the Claim, which may include legal expertise if legal issues are involved.
- (ii) Each Party shall bear its own costs of the arbitration, including attorneys' fees, and each Party shall share equally all fees and expenses of the arbitrator and the administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions regarding the arbitrability of any Claim shall be decided by the arbitrator(s).
- (iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties involved in the arbitration.

(e) Amendment of Subsection. Notwithstanding any other provision of this Declaration, this Subsection 8 may not be amended prior to the expiration of 20 years from the date of recording of this Declaration without the prior written consent of the Declarant, or, if the Declarant has ceased to exist, by both of the entities identified below as Managing Members of the Declarant.

Section 9. Association's Obligation to Maintain Traffic Control and Street Signs. As required by the Town of Cary, the Association shall be responsible for all costs associated with the purchase, manufacture, installation and perpetual maintenance of all specialty traffic control and street name signs within the Subdivision, each and all of which shall be approved by the Town prior to installation. If the Association fails to fulfill its obligations as set forth herein, the Town may, at its option, install Town-standard signs, in which event, the Association shall be required to remove the specialty signs and posts at no cost to the Town and to reimburse the Town for the cost of materials and installation of Town-standard signs and posts.

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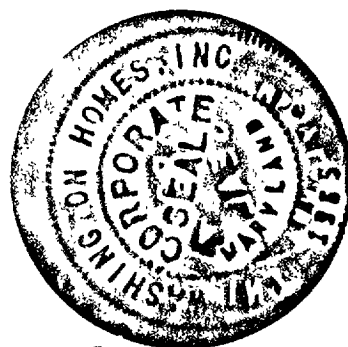
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal as of the date shown in the notary acknowledgments set forth below.

DECLARANT:

HERITAGE PINES, LLC, (Seal)
a North Carolina Limited Liability Company

By: WASHINGTON HOMES, INC. (Corporate Seal)
Managing Member

By: Christopher R. Spendley
Senior Vice President

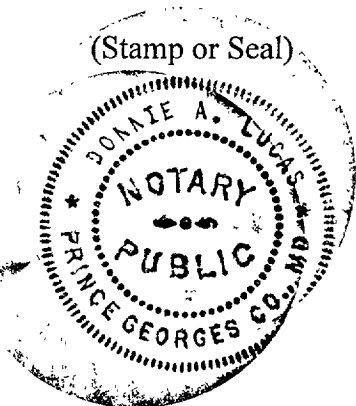


ATTEST: Deborah A. Aliff
Assistant Secretary

STATE OF MARYLAND - Prince George COUNTY:

I, Donnie A. Lucas, a Notary Public for the County and State aforesaid, certify that Deborah A. Aliff personally came before me this day and acknowledged that he/she is Assistant Secretary of **WASHINGTON HOMES, INC.**, a Maryland corporation and a Managing Member of **HERITAGE PINES, LLC**, a North Carolina Limited Liability Company, and that, by authority duly given and as the act of the corporation as Managing Member of the company, the foregoing instrument was signed in its name by its Senior Vice President, sealed with its corporate seal, and attested by him/her as its Assistant Secretary.

WITNESS my hand and official stamp or seal, this the 24th day of February, 2000.

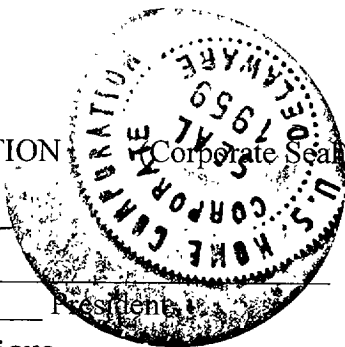


Donnie A. Lucas
Notary Public
My commission expires: _____

DONNIE A. LUCAS
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 7, 2004

By: U. S. HOME CORPORATION
Managing Member

By: Division
James G. Migliore



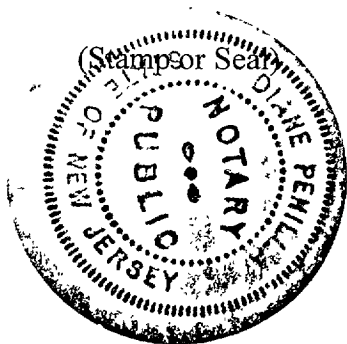
ATTEST:

Sherry Smith
Secretary

STATE OF NEW JERSEY - Ocean COUNTY:

I, Diane Penilla, a Notary Public for the County and State aforesaid, certify that Sherry Smith personally came before me this day and acknowledged that he/she is - Secretary of **U.S. HOME CORPORATION**, a Delaware corporation and a Managing Member of **HERITAGE PINES, LLC**, a North Carolina Limited Liability Company, and that, by authority duly given and as the act of the corporation as Managing Member of the company, the foregoing instrument was signed in its name by its Division President, sealed with its corporate seal, and attested by him/her as its - Secretary.

WITNESS my hand and official stamp or seal, this the 8 day of February, 2000.



Diane Penilla
Notary Public
My commission expires: 12/24/03

DIANE PENILLA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES DEC. 24 2003

EXHIBIT A

Lying and being in the Town of Cary, Cedarfork Township, Wake County North Carolina, and being more particularly described as follows:

BEING all of the property shown and depicted on that certain plat entitled "Subdivision Map: HERITAGE PINES, PHASE 1A", recorded in **Book of Maps 1999, Page 1181**, Wake County Registry, which property includes **Lots 30-34**, inclusive, in **HERITAGE PINES, PHASE 1A**, as shown on the aforementioned recorded plat, to which plat reference is hereby made for a more particular description of same.

BEING all of the property shown and depicted on that certain plat entitled "Subdivision Map: HERITAGE PINES, PHASE 1B", recorded in **Book of Maps 1999, Page 2266**, Wake County Registry, which property includes **Lots 1-12**, inclusive, and **open space** in **HERITAGE PINES, PHASE 1B**, as shown on the aforementioned recorded plat, to which plat reference is hereby made for a more particular description of same.

BEING all of the property shown and depicted on that certain plat entitled "Subdivision Map: HERITAGE PINES TOWNHOMES, PHASE 1", recorded in **Book of Maps 1999, Page 2149**, Wake County Registry, and previously recorded in Book of Maps 1999, Page 1516, which property includes **Lots 245-271**, inclusive and **Lots 305-316**, inclusive, and **common area** in **HERITAGE PINES TOWNHOMES, PHASE 1**, as shown on the aforementioned recorded plat, to which plat reference is hereby made for a more particular description of same.

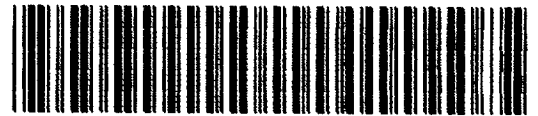
EXHIBIT B

HERITAGE PINES

Lying and being in the Town of Cary, Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

All of **Tract 1**, containing 96.4364 acres, more or less, as shown on a map entitled "Recombination Map, HERITAGE PINES SUBDIVISION AND EDWARDS TRACT 2", recorded in **Book of Maps 1998, Page 2310**, Wake County Registry, SAVING AND EXCEPTING THEREFROM all portions of the property real property dedicated to the Town of Cary or the North Carolina Department Of Transportation for rights-of-way of public roads and streets.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 008535 Page : 01683 - 01719



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

North Carolina - Wake County

The foregoing certificate____ of _____

Dennis A Lucas
Diane Penilla

____ 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: Sandra K Callahan
~~Assistant~~/Deputy Register of Deeds

This Customer Group
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