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*Wakefield
HOA*

WAKEFIELD RESIDENTIAL SECTION

DECLARATION OF MASTER PROTECTIVE COVENANTS

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PRESENTED
FOR
REGISTRATION
93 SEP 27 AM 11:56
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

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Exhibit "A" - Property Description

WAKEFIELD RESIDENTIAL SECTIONDECLARATION OF MASTER PROTECTIVE COVENANTS

THIS DECLARATION OF MASTER PROTECTIVE COVENANTS made this 23 day of September, 1993 by NORTH HILLS, INC., a North Carolina corporation, ("Declarant");

W I T N E S S E T H:ARTICLE IDeclaration

1.01. General. Declarant is the owner of that certain 122.34 acre, more or less, presently undeveloped tract of land situated in Wake County, North Carolina, more particularly described on Exhibit "A" attached hereto. Declarant intends to develop the said 122.34 acre tract in phases as a high quality residential project. To accomplish this, Declarant has determined to establish suitable standards and procedures so that the development may occur in an orderly, environmentally sound and aesthetically pleasing manner; so that the improvements may be soundly designed and constructed, may be visually compatible with other improvements and may be harmonious with the natural surroundings; so that the property may not be used in a manner which is unlawful or inappropriate for the well being of the development; and so that any landscaped areas, greenbelts, parking areas, pedestrian ways, streets, roads, common areas and telecommunications, utility and other systems and easements as may be constructed or installed may be well designed and maintained. The purpose of this Declaration is to achieve the aforesaid objectives. The intention of Declarant is that this Declaration be liberally and broadly construed so as to effectuate such purpose.

1.02. Declaration. Declarant hereby establishes, adopts and declares that the Development is and shall be subject to, and that all land and Improvements within the Development shall be acquired, held, owned, encumbered, used, occupied, enjoyed and transferred subject to, the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, terms and provisions hereinafter set forth, all of which shall be covenants running with the title to land within the Development, and shall be personal covenants and obligations of and shall inure to the benefit of each Owner. Each contract of sale, option, deed, deed of trust, easement or other instrument which may hereafter be executed with respect to any land and Improvements within the Development

shall be deemed to have been executed, delivered and accepted subject to this Declaration and to have incorporated this Declaration by reference therein, regardless of whether any such instrument makes reference to or specifically incorporates this Declaration by reference therein.

1.03. Additions, Deletions and Modifications. Declarant (prior to the Conversion Date) and the Association (upon and after the Conversion Date) shall have, and Declarant for itself and the Association hereby reserves, the exclusive, unrestricted and unconditional right to add property to or delete property from this Declaration. Property so added or deleted need not be contiguous to property subject to this Declaration. Such addition or deletion shall be accomplished by the execution of a Supplemental Declaration identifying the property to be added or deleted and the recordation of such Supplemental Declaration in the appropriate public records. More than one Supplemental Declaration may be executed and recorded. Upon the recordation of a Supplemental Declaration, the property so added or deleted shall become or cease to be (as the case may be) acquired, held, owned, encumbered, used, occupied, enjoyed and transferred subject to the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, terms and provisions herein set forth and a part of the Development for all (or any) purposes. As to any Supplemental Declaration which adds property to this Declaration, Declarant or the Association may include such additional or different covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, terms and provisions as Declarant or the Association, in its sole discretion, may determine. In addition, Declarant shall have, and does hereby reserve, the exclusive, unrestricted and unconditional right to adjust or otherwise revise the boundary lines of any or all Lots and to revise such other matters as may be reflected on the Plat; provided, however, that (a) no such boundary line adjustment or revision shall be made if the effect thereof is to alter the boundary line of a Lot not then owned by Declarant and (b) all such adjustments and revisions shall be effected by the recordation of an amendment, revision or replat of the Plat in the appropriate public records.

ARTICLE II

Definitions

As used in this Declaration, the following definitions shall obtain:

- (a) "ACC" shall mean the Architectural Control Committee of the Association.
- (b) "Act" shall mean the North Carolina Nonprofit Corporation Act, as from time to time amended.

- (c) "Affiliated Person" shall mean any Person who or which controls, is controlled by or is under common control with Declarant, the Association or any Owner. "Control" shall be deemed to exist where the Person (i) is an executive officer, director or general partner of Declarant, the Association or any Owner, (ii) has contributed more than twenty-five percent of the capital of Declarant, the Association or any legal entity Owner, (iii) is entitled to cast or direct the casting of, on matters which by law all holders of voting rights are entitled to vote, at least twenty-five percent of the votes therein or (iv) otherwise possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of Declarant, the Association or any legal entity Owner, whether through the ownership of voting securities, by contract or otherwise. "Non-Affiliated Person" shall mean any Person other than an Affiliated Person.
- (d) "Approved Plans" shall mean the final plans, specifications and other documentation and materials as the ACC may require with respect thereto for any Improvements which have been approved by the ACC and have been initialed by a duly authorized representative of the ACC and of the Owner.
- (e) "Assessments" shall mean the Regular Group Assessments, the Special Group Assessments and the Special Individual Assessments levied from time to time by the Association in accordance with, and as more fully described in, Sections 8.03, 8.04 and 8.05 hereof.
- (f) "Association" shall mean the Wakefield Homeowners' Association, a North Carolina nonprofit corporation formed pursuant to the Act, and its successors and assigns including entities into or with which the named corporation, or its successors and assigns, may merge or be consolidated.
- (g) "Association's Lien" shall mean the first and prior lien on each Lot established and assigned to the Association to secure sums due the Association pursuant to Section 8.08 hereof and subordinated pursuant to Section 8.09 hereof.
- (h) "Board" shall mean the Board of Directors of the Association.
- (i) "Committee" shall mean any committee created by the Board, including the ACC.

- (j) "Committee Member" shall mean a member of any Committee. A Committee Member may but need not be (i) an Owner, (ii) an officer, director, shareholder, partner, beneficiary or employee of an Owner, Declarant or the Association or (iii) another Affiliated Person.
- (k) "Common Areas" shall mean those areas, and the improvements located under, on or above those areas, within or proximate to the Development which may be designated from time to time by Declarant in such manner as Declarant deems appropriate for use for recreational and general welfare purposes by all, or specific groups or categories of, Owners.
- (l) "Conversion Date" shall mean the date Declarant elects to convert its Class B Membership in the Association to a Class A Membership, the timing of which election shall be at the sole discretion of Declarant.
- (m) "Declarant" shall mean North Hills, Inc., a North Carolina corporation, being the owner of the Development, and its successors and assigns.
- (n) "Declaration" shall mean this Declaration of Master Protective Covenants as from time to time amended, supplemented and restated pursuant to the provisions hereof.
- (o) "Development" shall mean the land and the Improvements as to which this Declaration from time to time applies, which currently is the 122.34 acre tract of land described on Exhibit "A" attached hereto.
- (p) "Development Standards" shall mean those development plans and design standards from time to time adopted by Declarant in such manner as Declarant deems appropriate as applicable to the Development.
- (q) "Equestrian Center" shall mean the area reflected on the Plat as the "Future Equestrian Center" and the improvements constructed thereon, including, inter alia, the barn, paddocks, pump house, shop, storage facilities, riding rings, fences and parking lots. The Equestrian Center is not (but may, if hereafter specifically so designated in writing by Declarant, become) a Common Area or a part of the initial Development, and therefore is not encumbered or restricted in any respect by this Declaration.

- (r) "Exculpated Person" shall mean Declarant, the Association, and the officers, directors, shareholders, employees, agents and Members and Committee Members thereof.
- (s) "Governing Documents" shall mean this Declaration, the Development Standards, the Articles of Incorporation and ByLaws of the Association, the Plat and, as applicable, the rules and regulations promulgated pursuant to Section 5.02 hereof, all as from time to time in effect.
- (t) "Governmental Authority" shall mean any and all courts, boards, agencies, commissions, offices, corporations, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
- (u) "Improvement" shall mean any structure or other improvement of any kind, whether below, at or above grade, located anywhere in the Development, including but not limited to single family residences, garages and other parking facilities, equipment, mailboxes, gazebos, outbuildings, refuse collection containers or facilities, utility installations, storage tanks and other facilities, cables, conduits, wiring, towers, masts, antenna, microwave dishes, patios, decks, walkways, driveways, fences, berms, landscaping, exterior sculptures and other works of art or decorative embellishments, fountains, flag poles, exterior lighting equipment, standards and fixtures, swimming pools, ponds and other water systems, animal pens, bird houses and baths, tennis courts, other recreational facilities, site grading and other artificial earth movement.
- (v) "Legal Requirements" shall mean any and all (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, requirements, permits, certificates or ordinances of any Governmental Authority, insurance underwriter or utility company in any way applicable to any Owner or such Owner's Lot, or any Improvements constructed or to be constructed thereon, including but not limited to any of the aforesaid pertaining to health, safety, insurance, zoning, environmental and utility matters and (ii) the Governing Documents.
- (w) "Lot" shall mean a tract or parcel of land within the Development which has been designated by Declarant in such manner as Declarant deems appropriate as a site on which a Residence may be constructed. Initially, the Lots shall be as designated on the Plat.

- (x) "Member" shall mean a member of the Association, and shall be either a Class A Member or a Class B Member. "Class A Member" and "Class B Member" shall have the meanings ascribed to them in Section 3.03 hereof.
- (y) "Occupant" shall mean any Person, other than the Owner, who occupies any Improvement or portion thereof.
- (z) "Owner" shall mean the record owner, whether one or more, of the fee simple title to a Lot. Notwithstanding any legal theory (of mortgage or otherwise), no holder of a deed of trust or mortgage on any Lot, or of any security interest with respect thereto, shall be deemed an "Owner" hereunder unless and until the holder has acquired title to the fee of the Lot. For purposes of Section 11.02 hereof, Declarant shall be an "Owner" as to each Lot for so long as it owns fee simple title thereto.
- (aa) "Person" shall mean any natural person, trust, corporation, association, partnership, joint venture or other legal entity, public or private.
- (bb) "Plat" shall mean the plat referred to on Exhibit "A" hereto, as from time to time amended, restated or replatted of record, together with such additional plats (and amendments, restatements or replats thereof) as may subsequently be filed in the Registry of Wake County, North Carolina reflecting additional phases of the Development.
- (cc) "Record Date" shall mean (i) such date as the Association may, from time to time, set for the purpose of determining which Owners shall be liable for a Regular Group Assessment or a Special Group Assessment or (ii) upon the failure of the Association to set a specific date for the determination referred to in clause (i) hereof, on the date the annual budget (in the case of Regular Group Assessments) or the specific expenditures (in the case of Special Group Assessments) are adopted or approved by the Board.
- (dd) "Residence" shall mean an Improvement designed to be occupied as a detached single family residence together with an associated garage.
- (ee) "Variance" shall mean any approval granted by the Association to any Owner for a deviation or noncompliance with this Declaration or the Development Standards, which approval has been duly executed by the Chairman of the ACC.

- (ff) "Well Site" shall mean those areas within or proximate to the Development designated by Declarant in such manner as Declarant deems appropriate on which water wells and appurtenances may be located. Well Sites may be located within one or more Lots.

ARTICLE III

Association

3.01. General. The Association has been formed for the sole benefit of the Development, and shall be operated in accordance with this Declaration and the Act. The Association shall have all of the rights, privileges, powers and authority as are permitted or conferred upon it in its Articles of Incorporation, this Declaration or in the Act, or as may be implied to be reasonably necessary to achieve the objectives of this Declaration. The Association shall have such additional rights and powers as are reserved unto Declarant in this Declaration, or are otherwise possessed by Declarant, and assigned by Declarant to the Association, which Declarant may do at any time or times. The Association shall be managed by the Board in accordance with its Bylaws and the Act. Without in any way limiting the generality of the foregoing, the Association shall have the authority to establish and change its fiscal year; to execute, deliver, perform and enforce contracts and leases; to hire employees and to retain third party contractors; to designate the bank or banks in which to deposit its funds; to set and collect Assessments; to acquire, sell, exchange, lease, encumber or otherwise transfer or dispose of any of its assets, real or personal; to acquire, construct, insure, maintain, repair and replace facilities within the Common Areas; to borrow funds and mortgage or pledge its assets (including, but not limited to, the Common Areas or the Improvements to be constructed thereon) to secure the repayment of same; to initiate or defend litigation; to accumulate reserve funds; to prepare tax returns; to adopt and revise from time to time rules and regulations for the Development or designated portions thereof; to adjust, collect and disburse insurance proceeds; to perform services for one or more Owners; to perform actions which an Owner was obligated but failed to perform pursuant to any of the Governing Documents and, in general, to take any action which the Board on behalf of the Association determines to be in the best interest of the Development. The Association may also retain from time to time such professional assistance as the Board may approve to assist the Association in performing its functions under this Declaration. Without in any way limiting the generality of the foregoing, the Association may, from time to time, retain accountants with respect to the calculation of all or any component of any Assessments and retain attorneys to initiate litigation in the name of the Association, and to defend litigation brought against

the Association, with respect to this Declaration or the Association's rights, remedies, recourses, duties or responsibilities hereunder.

3.02. Membership. Immediately and automatically upon a Person becoming an Owner, such Person shall become a Member. Such membership shall be appurtenant to ownership of the requisite interest in the Development and no incidence of such membership may be severed from such interest or otherwise held separately therefrom. Immediately and automatically upon any Person ceasing to be an Owner, such Person shall cease to be a Member. Such termination shall not, to any extent, extinguish, relieve or reduce any accrued liabilities or obligations of the former member to the Association, or impair any rights, remedies or recourses which the Association or any other Owner has with respect to the former member. Except as may be provided to the contrary in any Governing Document, each Member shall have all the rights provided for in the Act.

3.03. Classes of Members: Voting Rights. As may be more fully set forth in the Articles of Incorporation and the ByLaws of the Association, as from time to time amended or restated, the Association has the following two classes of Members:

- (a) Class A Members, who shall be (i) prior to the Conversion Date, the Owners other than Declarant and (ii) upon and after the Conversion Date, the Owners including Declarant to the extent that Declarant is an Owner.
- (b) Class B Members, who shall be (i) prior to the Conversion Date, Declarant or its designees and (ii) upon the Conversion Date, automatically converted to Class A Members so that, from and after the Conversion Date, there shall no longer be any Class B Members.

Prior to the Conversion Date,

- (a) Class A Members shall not be entitled to vote on any matter relating to the Association or the Governing Documents other than proposed amendments to or the termination of this Declaration, as to which a Class A Member in good standing may be entitled to vote (on the basis of one vote for each Lot owned by such Member) pursuant to Section 11.02 hereof, and
- (b) Class B Members shall be entitled to vote on all matters relating to the Association and the Governing Documents on the basis of one vote for each Lot owned by the Class B Member.

Upon and after the Conversion Date, each Class A Member in good standing shall be entitled to vote on all matters presented to the Association for a vote, on the basis of one vote for each Lot owned by such Member. Where more than one Person owns an interest in a Lot, all such Persons collectively shall be a single Member with respect to such Lot, shall cast their one vote in such manner as they may determine between or among themselves and shall jointly so notify the Association in writing by the last day the votes may be cast; provided, however, that, (i) with respect to any Lot, in no circumstance may more than one vote be cast with respect thereto and (ii) if more than one Owner attempts to cast a vote with respect to the same Lot, the Association shall disregard all votes attempted to be cast with respect to that Lot until the Owners thereof determine how the one vote attributable thereto is to be cast and jointly so notify the Association in writing. For purposes of this Declaration, a "Member in good standing" shall mean an Owner which has, not less than seven days prior to the last date established by the Association for the casting of votes, fully paid all sums for which it has been billed by the Association, and fully performed all of its other obligations as set forth in the Governing Documents. The Board shall have the sole responsibility and authority for determining whether a Member has good standing status, and shall make such determination with respect to all Members prior to a vote being taken by the Association on any matter on which Class A Members are entitled to vote. If the Board, in its sole discretion, determines that adequate extenuating circumstances exist, the Board may waive the seven day requirement set forth above and require only that such payment and performance be made at any time before the vote is cast. Any Member which is determined to be not in good standing shall, for so long as such status shall continue, be disqualified from voting on any matters presented to the Members. Other than with respect to legitimate proxies issued to a member of the Owner's immediate family (defined herein to mean any Person related to the Owner by consanguinity, adoption or marriage), no Member may, directly or indirectly, assign to or otherwise vest in any other Person the right or power to cast, or direct the casting of, any vote of such Member with respect to the Association or this Declaration.

3.04. Quorum; Voting and Notices. One-half of the votes of each class of Members in good standing at any time shall constitute a quorum for voting by such class. Only Members in good standing shall be entitled to vote. The vote of the majority of those votes entitled to be cast, either present or voting by legitimate proxy, at a duly called meeting at which a quorum of Members in good standing are represented, or by consent in writing as permitted under the Act, shall be sufficient for the transaction of any business, unless otherwise provided by law or the Governing Documents. Additional notice requirements for actions proposed to be taken by the Association which require a voted approval by its Members may be set forth in the Articles of Incorporation or the ByLaws of the Association, as from time to time amended or restated.

3.05. Committees. The Association shall have the authority to establish, at any time and on such terms as the Board in its discretion may adopt, such Committees as the Board may desire to carry out the purposes of this Declaration. Each Committee established by the Board shall have such membership, rights, powers, duties, authorities and limitations, shall perform such functions and services, and shall exist for such period of time, as the Board in its discretion may determine consistent with the Act.

3.06. Articles of Incorporation and ByLaws. The Articles of Incorporation and ByLaws of the Association, as from time to time amended and restated, are incorporated by this reference into this Declaration with the same force and effect as if they had been recited verbatim herein. Accordingly, the Articles of Incorporation and ByLaws, as from time to time amended and restated, shall have the same force, effect and dignity as the provisions of this Declaration. Every reasonable effort shall be made to construe the Articles of Incorporation, the Bylaws and this Declaration, as from time to time amended, supplemented and restated, consistently and so as to achieve the objectives stated in Section 1.01 hereof. However, if any irreconcilable conflict shall arise among the documents, to the extent permitted by law the provisions of this Declaration shall control.

3.07. Association Insurance. The Association shall have the right, power and authority to obtain and maintain policies of insurance covering such risks, issued by such companies, upon such terms and with such deductibles as the Board may from time to time determine. Such insurance may include, but shall not be limited to, general liability insurance for bodily injury and property damage, contractual liability and other coverages found in broad form liability endorsements, fidelity insurance, non-owned automobile insurance and officers and directors liability. The Association shall also have the right, power and authority to obtain and maintain fidelity bonds covering those Persons who have access to the funds of the Association. The Association shall have the right, power and authority to adjust and settle any claim insured against under, and to receive and disburse any insurance proceeds payable pursuant to, any policy obtained by the Association in such manner as the Board may determine.

3.08. Owner Insurance. The Association shall have no responsibility to obtain any insurance on any property (real or personal) of any Owner or Occupant, or with respect to any activity or circumstance which may occur or exist on the Lot or within the Improvements owned by any Owner. Accordingly, property and liability insurance pertaining to an Owner's Lot or Improvements, or the activities or circumstances occurring or existing therein, shall be the sole responsibility of the Owner to obtain and maintain.

ARTICLE IV

Design and Construction of Improvements

4.01. General. All Improvements shall be designed and constructed in strict accordance with the Governing Documents and all Legal Requirements. Accordingly, without a Variance, any Improvement which is not designed in strict accordance with the Governing Documents shall not be permitted to be constructed or placed on any Lot and any Improvement which is constructed or placed on any Lot not in strict accordance with the Governing Documents shall not be permitted to remain.

4.02. Architectural Control Committee. To assist the Board in performing its duties under this Declaration, the Board is hereby authorized to establish the ACC composed of such Members, and possessed of such rights, powers, duties, authorities and subcommittees, as the Board may, from time to time, determine. The construction of any Improvement (or the alteration of any Improvement which the ACC has previously approved) by any Owner other than Declarant shall not be commenced unless and until the final plans, specifications and other such documentation and materials as the ACC may require with respect thereto have become Approved Plans. In the course of reviewing such matters, the ACC shall be fully authorized to consider, approve or reject, as it deems appropriate, any and all aspects of the design, architecture, construction, location and landscaping of or associated with the proposed Improvements as to their conformity and harmony with the architectural and design scheme as established by the Development Standards and as developed over the course of time by the ACC or which may, in the opinion of the ACC, effect the enjoyment of one or more Owners or the value of the Development. Such matters shall be reviewed essentially from their aesthetic perspective, and approval thereof shall not be deemed to signify that the ACC has confirmed the engineering or structural design or technical quality of such matters or that, if construction occurs even in strict accordance with the Approved Plans therefor, the resulting Improvements will be good, workmanlike, safe or attractive or consonant with Legal Requirements. Any Improvements for which any construction or alteration has been commenced or completed without Approved Plans therefor shall be in violation of this Declaration and shall, upon demand by Declarant or the Association, be subject to removal from the Development at the cost of the Owner. Without in any way limiting the permissible scope of the ACC's review process, or the objective or subjective considerations the ACC may utilize in approving or disapproving any submittal hereunder, the ACC shall be fully authorized and empowered to reject any proposed Improvement or alteration on the basis of the ACC's judgment of the unsuitable nature of its architectural character, the inadequacy of its design characteristics or site dimensions, its general unattractiveness, its incompatibility with the

Development Standards or any other existing or proposed Improvements within the Development or the use of inappropriate building materials or techniques.

4.03. Development Standards. Declarant has heretofore adopted, as applicable to the Development, and does hereby confirm the adoption of, the Development Standards. The Development Standards have been prepared with the utmost due care and attention and with a view toward accomplishing the purposes stated in Section 1.01 hereof. Nevertheless, technological and other changes will undoubtedly occur prior to the time that all Lots have been sold and Residences constructed on them. Accordingly, it is imperative that Declarant have, and Declarant hereby reserves, the exclusive right, power and authority to make any and all revisions to and restatements of the Development Standards as Declarant deems advisable from time to time to accomplish the purposes of this Declaration. Revisions to and restatements of the Development Standards may be adopted by Declarant at any time without any formal requirements therefor. In particular, it shall not be necessary that any revisions or restatements be recorded or otherwise filed in any public records. However, the operative Development Standards which are in effect at any time shall be available for inspection by any Owner or prospective Owner at the Association's or the ACC's office during reasonable business hours. As revisions to and restatements of the Development Standards are adopted, they shall become automatically binding on each and every Owner; provided, however, that no such revision or restatement shall require the reconstruction or alteration of any Improvement as to which Approved Plans are in existence on the date the revision or restatement was adopted. The previous sentence shall not, however, limit the ability of the ACC to require that any Owner bring its Improvements into compliance with the then operative Development Standards if and when such Owner submits to the ACC a request for approval of any alterations to Improvements previously constructed by it, or of the construction of new Improvements. Prior to acquiring any Lot or interest therein, each Person is advised to contact the Association and review the then operative Development Standards.

4.04. Review Procedure. Unless and until changed by the ACC, and subject to such additional or different requirements as the ACC may from time to time adopt, the design review procedure for any proposed Improvement shall be as set forth in this Section 4.04. The Owner of a proposed Improvement shall prepare and furnish in duplicate sets (one of which shall be reproducible) to the ACC, the following documentation:

- (a) a complete site plan showing building footprints, driveways, sidewalks, existing and proposed grades at such contour intervals as the ACC may prescribe (including spot finished grades at the corners of all buildings and erosion control measures), the exact locations of all proposed Improvements and all relevant setbacks;

- (b) substantive drawings, plans and specifications for all proposed Improvements, including floor plans and full exterior elevations;
- (c) a complete description (and, if requested by the ACC, the submission of samples) of all proposed exterior materials, including composition, surface textures, colors and methods of assemblage;
- (d) a complete description of the proposed erosion control and landscaping plan;
- (e) a complete description of the exterior lighting plan, including location and method of installation;
- (f) a complete description of the utility and drainage plans, including the location of all electrical, gas, water, sanitary sewer and storm sewer lines, septic tanks and other utility facilities;
- (g) calculations showing the gross square footage in each building comprising the Improvements;
- (h) complete plans showing the location of and method of screening of exterior trash collection points, ground mounted building equipment or other free standing elements for which screening is considered by the ACC to be necessary;
- (i) a time schedule reflecting the estimated commencement date and completion date for the construction of all proposed Improvements; and
- (j) a statement as to whether the Improvements will be constructed simultaneously or in phases and, if in phases, designating the phases in reasonable detail and sequence.

Within thirty days after its receipt of the information called for above, together with such additional information as the ACC may require, the ACC shall review and approve (absolutely or conditionally) or reject all or any portion of the submittal. If the ACC determines that the submittal is consistent with the Governing Documents, the ACC shall approve the submittal subject to such conditions as the ACC may determine to be appropriate. If, however, the ACC determines that the submission is not consistent with

the Governing Documents, then the ACC may reject the submission, stating its reasons therefor with reasonable particularity. The ACC shall give written notification to the party submitting the material of the ACC's action. The decision of the ACC with respect to any material submitted to it shall be final. When and if the ACC approves the materials submitted to it such materials shall thereupon become "Approved Plans" hereunder. Approved Plans shall bear the initials of a duly authorized representative of the ACC and a duly authorized representative of the Owner of the Improvements reflected thereon. Such initials shall serve to evidence both parties' acknowledgment of the final, approved nature of such Approved Plans. Thereafter (and only thereafter) may the Owner of the proposed Improvement commence the construction thereof. The ACC may require, as a condition precedent in rendering its final approval, that the applicant obtain and produce appropriate building permits from applicable Governmental Authorities. However, the fact that such permit or permits are produced with respect to proposed Improvements does not require the ACC to issue its final approval to the submittals therefor. Conversely, the ACC's approval of such submittals does not mean that applicable Legal Requirements regarding the design and construction of improvements have been satisfied.

4.05. Revisions to Procedure. Declarant hereby reserves the exclusive right, power and authority to make any and all revisions to and restatements of the design review procedure as Declarant deems advisable from time to time to accomplish the purposes of this Declaration. Revisions to and restatements of the design review procedure may be adopted by Declarant at any time without any formal requirements therefor. In particular, it shall not be necessary that any revisions or restatements be recorded or otherwise filed in any public records. However, the operative design review procedures which are in effect at any time shall be available for inspection by any Owner or prospective Owner at the Association's office during reasonable business hours. Any revisions or restatements shall be prospective in effect only, and shall not affect any submittals which had become Approved Plans prior to the date of adoption.

4.06. Revised Submittals. If the ACC conditionally approves or disapproves in whole or in part any submission, the submitting party shall have the right to revise its submission on one or more occasions to cure the ACC's objections and resubmit the revised materials to the ACC. The ACC shall endeavor to review, act upon and notify the submitting party of its decision with respect to any such revised submittal with reasonable promptness.

4.07. Changes In Approved Plans; Construction In Accordance With Approved Plans; Alterations. No changes shall be made in any Approved Plans without the prior written approval of the ACC. No Improvement shall be constructed or, if constructed, allowed to remain, on any portion of the Development other than in strict accordance with the Approved Plans therefor. No alteration, rebuilding or reconstruction shall be made to or

of any Improvement without Approved Plans therefor. For purposes of this Declaration, an "alteration" to an Improvement shall mean (a) any change to the structure or the exterior of the Improvement or (b) any change to an Improvement which is visible from the exterior of the Improvement, and a "change" shall mean an addition, a deletion or a combination of existing components.

4.08. Professional Advisors; Application Fees. The ACC shall be authorized to employ or retain, at any time and from time to time, professional advisors and counsel (including, but not limited to, architects, attorneys, designers, engineers and landscape specialists) to assist it in the performance of its duties hereunder. The ACC shall be entitled to reimbursement for the salaries, fees and other expenses of such advisors, which shall be accomplished either by recoupment through assessments or by imposing a reasonable processing fee on applicants submitting documentation under this Article IV.

4.09. Records. The ACC shall keep records of each submittal, and of each action taken by the ACC with respect to each submittal, made by any Owner or proposed Owner hereunder. The ACC shall retain for such period as the ACC determines to be appropriate one set of the Approved Plans therefor (if any) for each Improvement and proposed Improvement. No Owner or prospective Owner shall have any right of access to, or any right to inspect or reproduce, any portion of any submittal made by any other Owner or prospective Owner other than the items described in Section 4.04(a) and (b) hereof.

4.10. Variances. Notwithstanding anything to the contrary contained in or inferable from this Declaration or any other Governing Document, the ACC shall have the sole, exclusive right, power, authority and discretion to grant, at any time or times, and with or without conditions, any and all variances from the review procedure set forth in Section 4.04 hereof or the Development Standards as the ACC determines to be appropriate. Variances may be granted prospectively or retroactively. Variances shall be legally effective only if in writing executed by the chairman of the ACC duly authorized to execute such Variance, with the specific nature of the Variance described therein. No Variance shall be effective unless evidenced in such manner; no Variance may be granted orally and no Variance shall be deemed granted by virtue of any inaction or custom of the ACC. Once a Variance is granted, it shall inure solely to the benefit of the issuee Owner, and its successors, assigns and subsequent Owners of the Lot with respect to which the Variance was specifically granted for so long as each owns the Lot, and shall become legally binding upon all other Owners. A Variance granted in any one instance shall be applicable only to that specific instance and shall not form a precedent for the granting of any subsequent Variance, nor shall it constitute a diminishment, waiver, dilution or

diminution of any provision of any Governing Document. Once granted, Variances shall not be subject to rescission.

4.11. Other Legal Requirements. Legal Requirements may now or hereafter exist which address some or all of the same issues (including but not limited to the design, construction, maintenance and use of Lots and Improvements) as are addressed by the Governing Documents. If two or more applicable Legal Requirements exist with respect to an issue which is addressed in the Governing Documents, the more or most restrictive of those requirements shall govern.

4.12. Inapplicability to Common Areas or Well Sites. This Article IV shall not apply to any Improvements which Declarant, the Association or any utility company has built or may hereafter build in the Common Areas or within any Well Site.

ARTICLE V

Uses

5.01. General. The only Improvements which may be constructed on any Lot are one Residence and such fixtures and other features ancillary thereto as the ACC may approve; provided, however, the ACC may authorize the construction of one Residence on more than one Lot, subject to such conditions as the ACC may deem appropriate. The only use which may be made of a Lot shall be to site a Residence and such customary uses ancillary thereto as the ACC may approve. By its acquisition of any Lot, the Owner thereof (excluding a Person whose principal occupation is that of homebuilder and who has acquired such Lot for the sole purpose of constructing for resale a Residence thereon) shall be deemed to have impliedly warranted and represented unto Declarant and the Association that the Owner is acquiring the Lot for the singular purpose of constructing (or, if a Residence has already been constructed on the Lot, for occupying) a Residence thereon as the primary Residence of such Owner and/or such Owner's immediate family or, if such Owner is a business entity, as the primary Residence of an existing officer, director, key employee, principal shareholder or general partner of the Owner. Without limiting the generality of the foregoing, no Lot or Residence shall be used for the operation of a boarding or rooming house, a "group home", a "half-way house", a "community home", a day-care center, a rehabilitation center, a treatment facility or a residence for Persons engaging in or undertaking any group living, rehabilitation, treatment, therapy or training with respect to actual or alleged criminal activities, alcohol or drug dependency, physical or mental handicaps or illness or other similar matters. For purposes of this Section 5.01, the term "Owner's immediate family" shall mean any number of Persons related to the Owner by consanguinity, adoption or marriage together with (a) one

person who is not so related and (b) not more than two additional Persons who are employed as household employees of the subject Residence. No Owner may use any portion of its Lot, or permit any position thereof to be used, for any other purpose or other than in strict accordance with all Legal Requirements. Notwithstanding the foregoing, however, no Exculpated Person shall have any obligation to enforce or report the violation of, and no liability for its decision not to enforce or report the violation of, any Legal Requirement.

5.02. Rules and Regulations. The Association shall have, and Declarant hereby reserves on behalf of the Association, the right, power and authority to establish, adopt, revise and restate from time to time such rules and regulations regarding the Development as the Association deems appropriate. Such rules and regulations may (by illustration and not by limitation) address any and all aspects of the design, construction, maintenance, repair, replacement, repainting and operation of Improvements; pedestrian and vehicular traffic; security; landscaping and landscape maintenance; utility usage; trash removal; pest control; loading and unloading of shipments; signage; exterior lighting; telecommunications; advertising; promotional matters; operation of the Association and any other activities affecting the general purposes set forth in Section 1.01 hereof. Upon adoption, such rules and regulations shall become a Governing Document and binding on all Owners of the property to which they are made applicable by the Association. After adoption, the Association shall furnish or otherwise make available to each Owner a copy of such rules and regulations. The Association may enforce compliance with such rules and regulations by all appropriate legal means.

5.03. Specifically Prohibited Acts. Without in any way limiting the permissible scope of the rules and regulations which may be promulgated pursuant to Section 5.02 hereof but subject to such Variances as the Association may from time to time grant, the following restrictions shall be applicable to the entirety of the Development:

- (a) Temporary Structures. No Owner shall construct or place within the Development, or to allow to remain on its Lot, any tent, shack, mobile home or other structure of a temporary character, or otherwise store or permit to be stored any property, other than as expressly permitted pursuant to Section 5.05 hereof.
- (b) Nuisance Activities. No Owner shall engage in any noxious, offensive or dangerous activity within the Development or permit any noxious, offensive or dangerous activity or circumstance or any nuisance to be conducted or exist within its Lot. Any noise or odor emitted by, and any discharge or waste from, any device, condition or animal which can be heard, smelled or

seen outside the perimeter of the subject Owner's Lot shall be deemed noxious and offensive. Without limiting the generality of the foregoing, no Owner shall install or operate any speaker, horn, whistle, bell or other sound device (except alarm devices used exclusively for security purposes) on the outside of such Owner's Residence, or which may be heard outside the perimeter of such Owner's Lot or discharge fireworks anywhere within the Development.

- (c) Commercial Activities. No Owner shall (i) operate any business or commercial activity from its Lot or the Residence thereon or (ii) permit any Person to occupy less than the entirety of its Lot and Residence thereon in consideration for the payment of rent by such Person. Clause (i) of the foregoing shall not preclude an Owner whose principal occupation is that of homebuilder from conducting business or commercial activities related to the construction and initial sales of Lots or Residences owned by such Owner in the Development. Clause (ii) of the foregoing shall not preclude an Owner from leasing the entirety of its Lot and the Residence thereon in consideration for the payment of rent provided that (A) such lease is made subject to all of the terms of this Declaration, (B) the lessee of such lease is one Person and (C) the lessee uses the Lot and Residence leased to it solely as the Residence of such lessee and such lessee's immediate family or, if such lessee is a business entity, as the primary residence of an existing officer, director, key employee, principal shareholder or general partner of such lessee. For purposes of this Section 5.03(c), the lessee's "immediate family" shall mean any number of Persons related to the lessee by consanguinity, adoption or marriage together with one Person who is not so related and not more than two additional Persons who are employed as household employees of the subject Residence.
- (d) Pets. No Owner shall use any portion of the Development, or permit the use of its Lot or the Residence thereon, to raise, breed or keep any animals, reptiles or fowl of any kind; provided, however, that domestic dogs, cats, fish, birds and other usual household pets may be kept by an Owner in its Residence if (i) the purpose thereof is not commercial, (ii) in the determination of the Association, the presence thereof does not constitute a nuisance or a danger to other Owners and (iii) such pets are kept, confined and leashed in strict accordance with all applicable Legal Requirements.

- (e) Rubbish. No Owner shall use any portion of the Development, or permit the use of its Lot, as a dumping ground for rubbish, trash, garbage, construction or other debris or any other waste material, other than at those sites (if any) specifically designated by the Association for such purposes. Each Owner shall place its rubbish, trash, garbage, debris and waste materials in sanitary, tightly closed containers located (i) on days when no collection is scheduled, inside of such Owner's Residence or at the specific retention point so designated on such Owner's Approved Plans and (ii) on days when collection is scheduled, at the specific collection point also so designated on such Owner's Approved Plans. All containers shall be removed from the collection point and relocated as provided in clause (i) above no later than 6:00 p.m. on each collection day.
- (f) Weapons. No Owner shall use any portion of the Development, or permit its Lot to be used, for hunting purposes, or discharge from any portion of the Development, or permit to be discharged from its Lot, any rifle, shotgun, pistol or other firearm, or any bow and arrow, or any other device or weapon (including air or CO2 powered "BB" or "pellet" type devices) designed to fire or shoot any projectile.
- (g) Signs. No Owner shall place anywhere in the Development, or permit to be placed on its Lot, any sign, billboard, poster or advertising device of any nature other than (i) one "for sale" sign relating solely to the Lot on which it is located and (ii) during the initial construction of the Residence, one sign relating solely to the general contractor constructing the Residence, the dimensions and graphics of each of which shall be subject to the approval of the ACC.
- (h) Fires. No Owner shall build in the Development, or permit to be built on its Lot, any open fire; provided, however, that this Section 5.03(h) shall not prohibit the use by any Owner of an interior fireplace or of a small and safe outdoor cooking facility, but only (i) within the Owner's Residence or such areas as may, from time to time, be designated for such purpose by the Association, (ii) in strict compliance with the instructions as may be provided in the manufacturer's or vendor's manuals for such cooking facilities and (iii) for non-commercial purposes.
- (i) Vegetation. No Owner shall deface, destroy, cut, remove or injure, or permit any of its employees, contractors, Occupants or invitees to deface, destroy, cut, remove or injure, any Improvement or any trees, shrubs, bushes, hedges

or other vegetation growing within the Development; provided, however, that this Section 5.03(i) shall not prohibit an Owner from performing or permitting to be performed appropriate, routine cuttings, prunings and removals of any vegetation within its Lot in accordance with good landscaping practices. If any Owner violates this Section 5.03(i), the Association shall be entitled to require such Owner, at such Owner's sole cost and expense, to remedy such violation to the Association's reasonable satisfaction by planting replacement trees, shrubs, bushes, hedges or other vegetation of comparable size and type.

- (j) Subdivision. No Owner shall subdivide its Lot, or relocate or alter the boundary lines thereof, or otherwise sell, transfer or convey to any Person less than the entirety of its Residence or Lot or enter into any timesharing or other fractional ownership of a Residence or Lot whereby various Persons become entitled to occupy the same on a schedule or determinable basis, or attempt to do any of the aforesaid. Neither this Section 5.03(j) nor anything else in this Declaration shall prohibit Declarant from relocating the common boundary lines of any Lots for so long as such Lots are owned by Declarant.
- (k) Telecommunication Interference. No Owner shall construct or allow to remain on, or operate from, its Lot or the Residence thereon any Improvement, including but not limited to any antenna, tower, microwave dish or other telecommunication equipment, machinery or facilities, which will or may interfere to any extent with (i) any television, radio or other electronic signals intended to be received by equipment located in any other Residence or the Common Areas or (ii) the installation, operation, reception, maintenance or use of any telecommunications network or system installed in the Development for the general use of the Owners therein.
- (l) Easements. No Owner shall grant any easement or right of way under, across or over any portion of its Lot.
- (m) Drilling Operations. No Owner shall erect or operate any equipment, derrick or other structure designed for use in, or conduct, any drilling, development, refining, quarrying or mining operations of any kind (other than for water), whether for oil, gas, coal or other hydrocarbons, anywhere within the Development. Neither this Section 5.03(m) nor anything else in this Declaration shall prohibit Declarant or the Association from erecting or operating any such equipment, or conducting any such activity, in any

Common Area if the purpose thereof is to achieve the objectives set forth in Section 1.01 hereof.

- (n) Parking. No Owner shall park any vehicle, boat or equipment on its Lot except in the garage located thereon or, up to a maximum of two non-prohibited vehicles at any time, in the driveway located thereon. For purposes of this Section 5.03(n), a "non-prohibited vehicle" shall mean any four wheel vehicle designed and used for the non-commercial transportation of individuals, and thus shall not include any commercial vehicle, any vehicle with commercial writing on its exterior, any vehicle permanently used or designed for commercial purposes, any tractor, any mobile home, any recreational vehicle, any stored vehicle, any vehicle which does not have a current operating license and any vehicle which is obviously inoperable, any trailer, any camper, any camper trailer or any water craft trailer, all of which shall be parked only in the enclosed garage located on such Lot or in such areas, if any, as may be designed for such purpose from time to time by the ACC. Any vehicle which is not parked in accordance with this Section 5.03(n) or any other Governing Document shall be subject to tow at the violating Owner's expense.
- (o) Water Sources. No Owner may (i) place any obstruction or debris in any catch basin or drainage area within the Development, same being for the purpose of the natural flow of water only, (ii) dump or discharge, or permit any of its employees, contractors, agents, Occupants, or invitees to dump or discharge, any materials or items in any catch basin, drainage area, ditch, swale, stream, creek, pond or lake within the Development, including without limitation grass clippings, leaves, petroleum products, fertilizers or other potentially hazardous or toxic substances, or (iii) install, construct or operate any sprinkler or irrigation system on such Owner's Lot or anywhere in the Development which draws upon the water from any catch basin, drainage area, ditch, swale, stream, creek, pond or lake within the Development.
- (p) Certain Vehicles. No Owner shall operate on its Lot, or anywhere else within the Development, any motorized dirt bike, "off trail vehicle", three-wheel vehicle, go-cart or motorbike.
- (q) Pedestrian Ways or Bridle Paths. No Owner shall use, or permit any of its employees, contractors, agents, Occupants or invitees to use, any pedestrian way or bridle path within the Development for any purpose other than walking, jogging or the riding or exercise of horses. Without limiting the

generality of the foregoing, no Owner shall ride or operate, or permit any of its employees, contractors, agents, Occupants or invitees to ride or operate, any bicycle or any vehicle (including specifically but without limitation any vehicle described in Section 5.03(p) hereof) on or about any bridle path within the Development.

5.04. Declarant Uses. Declarant may, and hereby reserves the right to, conduct its administrative activities and marketing program for the Development from any location within the Development, whether from permanent or temporary facilities.

5.05. Construction Uses. Any architect, engineer, contractor or subcontractor employed to assist in the design, construction, maintenance, repair, replacement, repainting or alteration of Improvements pursuant to Approved Plans may use the Lot on which the Improvements are (or are to be) situated for such purpose and, in connection therewith, may erect and use temporary facilities for administrative and storage purposes. All such activities shall be confined solely within the boundaries of the Lot on which the Improvements are (or are to be) situated, and all such facilities shall be removed within 120 days after their date of installation.

5.06. Construction Maintenance. The Owner of the Lot on which construction (including alteration, rebuilding and reconstruction) activities are being conducted shall at all times (a) cause its Lot to be maintained in a safe and reasonably clean condition during the course of the construction activity, (b) assure that no construction materials or equipment associated with its construction activity are stored or deposited outside of its Lot, (c) assure that no construction debris associated with its construction activity is burned, deposited or allowed to remain anywhere within the Development, (d) take care not to damage, and assure that its contractors and subcontractors do not damage, any street, curb, gutter, sidewalk, easement, utility facility, landscaped area or other Improvement and (e) remove all mud, debris and other materials which may have been deposited on any street within the Development by vehicles used in connection with the construction or by "run off" from the Lot.

5.07. Underground Installation. Subject to such Variances as the ACC may grant, all electrical, telecommunication, CATV, water, gas, sanitary sewer, storm sewer, drainage and other utility facilities and appurtenances thereto, including all lines, pipes, cables, conduits and wires located within the Development shall be installed and shall remain underground, buried to such depth as the ACC, the Governing Documents or Legal Requirements may require.

5.08. The Plat. The Plat may contain additional matters, including references to Well Sites, reserves, easements and buffers, which may constitute additional restrictions on the use of Lots or other property within the Development. Such restrictions shall be deemed incorporated into this Declaration to the same extent as if recited *verbatim* herein.

5.09. Community Water System. Each Owner shall be required to utilize, as its primary source of potable water to its Lot, the community water supply system which has been established for the Development and shall be required to tie into that system in accordance with applicable Legal Requirements. The foregoing shall not be construed to prevent any Owner from installing and utilizing in its Residence bottled water and bottled water appliances for incidental household use.

ARTICLE VI

Common Areas

6.01. General. From time to time Declarant may designate certain areas within the Development as "Common Areas", although nothing contained in this Declaration shall require Declarant to do so or constitute a representation by Declarant that it intends to do so. Common Areas shall be used solely for recreational and general welfare purposes. Such Common Areas may include, but need not be limited to, the Equestrian Center, bath and club houses, restrooms, swimming pools, tennis courts, ball parks, picnic areas, pedestrian trails, bridle paths, open areas, greenbelts and general park areas. As areas are so designated as "Common Areas", a specific description of those areas and the uses to which they may be placed shall be prepared and retained in the office of the Association for inspection by all Owners and prospective Owners. Declarant shall have the sole and exclusive, unrestricted and unconditional right to determine how areas will be designated as "Common Areas", to designate areas as "Common Areas" and to delete areas previously designated as "Common Areas" from such designation. Notwithstanding the foregoing, Declarant may declare an area which falls within a Lot as a "Common Area" only during the period that Declarant is the Owner of such Lot.

6.02. Owner's Easements of Enjoyment. Declarant hereby grants to each Owner a non-exclusive right and easement to use and enjoy the Common Areas for their intended purposes and in accordance with the Governing Documents. Such right and easement shall be appurtenant to the Owner's ownership of the Lot and shall pass with the title thereto to the new Owner and, coincident therewith, be extinguished as to the old Owner. The right and easement herein described shall be subject to any and all rights reserved by Declarant or the Association or created in any of the Governing Documents, including but not limited to the right to reconfigure or redesignate Common Areas, to prescribe

rules and regulations relating thereto, to construct Improvements therein and to mortgage such Improvements and the areas on which they are located, to execute, deliver and perform contracts for the furnishing of labor, materials or services thereto, to landscape such areas, to suspend the use rights thereto of any Member for so long as such Member is not a "Member in good standing" of the Association, to dedicate or transfer all or any part of the Common Areas to any Governmental Authority or utility company for such purposes and upon such conditions as the Board may determine and otherwise to exercise such powers as may be necessary or reasonably appropriate to achieve the objectives set forth in Section 1.01 hereof.

6.03. Maintenance. The Association shall use reasonable efforts to maintain the Common Areas and their facilities in a safe, clean, sightly, attractive and good state of condition and repair. Such maintenance shall include, without limitation and whenever appropriate, repairing, replacing, reconstructing, renewing and repainting any and all facilities constructed within the Common Areas, such as the Equestrian Center, lighting facilities, signs, entrance monuments, markers, traffic control signals, tennis courts, trails, pedestrian walkways, restrooms, swimming pools, basketball courts, baseball diamonds and picnic areas; removing litter, trash, garbage and waste; and mowing, watering, fertilizing, weeding, replanting, replacing, pruning and otherwise maintaining landscaping. The Association may also maintain areas within public utility easements and repair public streets within or adjacent to the Common Areas. The Association need not perform any maintenance otherwise required under this Section 6.03 if and to the extent that same is performed by a Governmental Authority or utility company. Notwithstanding the foregoing or anything else contained in the Governing Documents, the Association may, but shall not be obligated to, (a) obtain property damage or other insurance covering the Equestrian Center or any other facility within a Common Area or (b) rebuild or restore, even if insurance proceeds are available therefor, the Equestrian Center or any other facility within a Common Area which is damaged or destroyed, if the Board, in the exercise of its discretion, determines that such rebuilding or restoration is not in the best interest of the Association or the Owners.

6.04. Contracts. The Association shall have full right, power and authority to execute, deliver, perform and enforce any and all contracts (written or oral, with any Person including an Affiliated Person), including but not limited to maintenance contracts, painting contracts, swimming pool service contracts, construction contracts and landscape maintenance contracts, which the Board authorizes and which relate to the Common Areas.

6.05. Transfer and Dedication. Declarant may, at any time and from time to time, convey to the Association any or all of its right, title and interest in and to any area forming a

Common Area. Declarant, and after the transfer to the Association the Association, may at any time and from time to time dedicate or otherwise convey, in the Common Area, to any Person or authority any and all water, sanitary sewer, storm water, drainage, street, electrical, telecommunication, gas and other utility easements, lines and facilities and areas in which appurtenances thereto will be constructed and/or maintained. Unless and until the transferee accepts the maintenance responsibility for the area or areas transferred to it, the Association shall continue to have the obligation to maintain such areas and the facilities located therein, and the Owners shall continue to have the obligation to participate in the cost thereof.

6.06. Ad Valorem Taxes. Whenever a Lot contains within its boundaries an area designated as a Common Area, the Owner of the Lot and the Association shall seek either (a) a division of the parcel for tax assessment purposes, in which event any taxes on the portion designated as a Common Area shall be borne by the Association or (b) a reduction in the ad valorem taxes on such Owner's Lot as a consequence of the encumbrance.

6.07. Equestrian Center. (The following provisions of this Section 6.07 shall become effective only if and when the Equestrian Center becomes part of the Development pursuant to Section 1.03 hereof or a Common Area. Until that time, the Equestrian Center shall not be encumbered or restricted in any respect by this Declaration, and Declarant shall be free to own, operate, use or demolish the Equestrian Center at its discretion.) Declarant hereby gives notice that the Equestrian Center may from time to time be leased for such periods and on such terms as Declarant or the Association may, in its sole discretion, determine; provided, however, that such terms shall not be inconsistent with the remainder of this Section 6.07. A copy of each lease agreement will be available for inspection in the Association's offices. Unless and until Declarant determines to the contrary, the Equestrian Center shall at all times be used solely for the boarding and exercise of horses and for other purposes directly related thereto. The barn, which comprises the principal feature of the Equestrian Center, is a highly unique, aesthetically pleasing and historically significant structure. Accordingly, unless done by or with the express written consent of Declarant, the barn may not be demolished or, unless necessary by virtue of fire, tornado or other casualty thereto, substantially remodeled or any of its individual components (including, but not limited to, its beams, planks and appurtenances) sold for profit. If Declarant subsequently conveys, leases or otherwise transfers the Equestrian Center to the Association or any other Person, such conveyance shall be deemed to have been made subject to and upon the aforesaid restrictions, the breach of which shall, at Declarant's option, afford Declarant full legal and equitable relief and, at Declarant's option, cause the immediate reverter of the Equestrian Center to Declarant. By its acquisition of a Lot, each Owner shall be deemed to have consented

to the terms of this Section 6.07. Nothing contained in this Section 6.07 shall be deemed to have created any rights (other than the rights of legal and equitable relief and reverter referred to above which shall inure to Declarant), responsibilities or liabilities.

ARTICLE VII

Lot Maintenance

7.01. General. Each Owner shall at all times maintain its Lot and all Improvements thereon in a safe, clean, sightly, attractive and good state of condition and repair. The Owner's maintenance obligation shall include, without limitation and whenever appropriate, the repairing, replacing, reconstructing, renewing and repainting of all Improvements constructed on the Owner's Lot; the storage and prompt removal of all litter, trash, garbage, grass clippings and waste; the mowing, watering, fertilizing, weeding, replanting, replacing, pruning and other general maintenance of all landscaping on the Owner's Lot in accordance with good landscaping practices and any rules or regulations therefor adopted by the Association; and the prompt removal during construction, reconstruction, maintenance or alteration of all debris generated as a result thereof. For purposes of this Section 7.01, the Owner's maintenance responsibility shall also extend to that area between the Owner's Lot and an adjacent street if such area is not a Lot or a Common Area, or is not otherwise maintained by the Association.

7.02. Damage or Destruction of Improvements. If any Improvements are damaged or destroyed, the Owner thereof shall promptly, and in any event within twelve months after the date of such damage or destruction, either repair, replace, restore or rebuild the Improvements in strict accordance with Approved Plans and otherwise to a condition consistent with Section 7.01 hereof or raze the Improvements and relandscape the affected area to a condition satisfactory to the ACC.

7.03. Association's Right to Perform. If an Owner fails to perform any construction, maintenance, repair, replacement, restoration, rebuilding or razing required of it pursuant to any Governing Document, and if such failure continues for ten days after written notice thereof is given to the Owner, then the Association may (subject to the additional conditions of Section 8.05(b) hereof), but shall not be obligated to, perform such obligation for the account and at the expense of the Owner involved. The amount expended by the Association for such purpose shall be a debt of the Owner, due the Association upon demand, and shall accrue interest at the rate provided for in Section 11.12 hereof. Declarant hereby expressly reserves on behalf of the Association the unrestricted right, power and authority to enter any Lot at any time for the purpose of determining whether the Lot and the Improvements thereon were in the condition required by the Governing

Documents and, if not, of performing any construction, maintenance, repair, replacement, restoration, rebuilding or razing which the Owner thereof was obligated, but failed, to perform. If the Association elects to perform, and does perform, any work pursuant to this Section 7.03, the Association shall do so without any liability or obligation to the Owner or any third party, and the Owner of the Lot hereby assumes liability for, and agrees to defend, indemnify and hold harmless each Exculpated Person from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including court costs and reasonable attorney's fees) resulting from any injuries to or death of any person or any damage to any property occurring as a result of the Association's performance of such work. The rights of the Association to perform any work which an Owner was obligated, but failed, to perform shall not be the Association's exclusive right arising as a result of such failure, but rather shall be cumulative of all of the Association's other rights, remedies and recourses, whether at law or in equity, arising as a result thereof.

7.04. Landscape Maintenance. The Association may, at its election and notwithstanding the provisions of Section 7.01 hereof, perform landscape maintenance on any or all Lots or enter into one or more contracts, on such terms as the Association may determine, pursuant to which landscape maintenance on any or all Lots shall be performed. If the Association elects to perform such landscape maintenance, or if the Association enters into a contract or contracts whereby such maintenance is to be performed, the Owner or Owners of each Lot covered thereby shall be relieved of their landscape maintenance obligation under Section 7.01 hereof to the extent, and for so long as, same is provided by the Association or the landscape maintenance contractor. Unless landscape maintenance is performed by the Association or contractors for all Lots, all sums paid in connection therewith by the Association shall be reimbursed to the Association as a Special Group Assessment. The Owner of each Lot shall provide the Association and each landscape maintenance contractor with adequate means of ingress and egress to and over, and freedom from unreasonable interference on, such Owner's Lot so that the Association or the contractor may perform its work thereon in a prompt, professional and uninterrupted manner.

7.05. Landscape Buffers. Declarant hereby reserves for itself and the Association the right to impress any and all Lots with a landscape buffer, which shall essentially be an area of specified location in which such trees, vegetation, landscaping, berms or other artificial earth movement as specified by Declarant (or, after the Conversion Date, the Association) shall be installed and maintained by the Owner thereof. The landscape buffer may be impressed, as to any Lot, in any Governing Document.

ARTICLE VIII

Assessments

8.01. General. The Association shall have full right, power and authority to assess the Owners for, collect and expend all sums which the Board determines to be necessary or reasonably appropriate for the general enjoyment, health, safety, welfare and protection of the Owners with respect to the Development and, in general, to achieve the purposes of this Declaration. Without in any way limiting the generality of the foregoing, the Association may assess, collect and expend sums for

(a) the payment of any and all expenses of operating the Association and any facilities owned by the Association including, without limitation, payroll salaries and burdens, rent, insurance premiums, ad valorem or other taxes, utility charges, supplies, materials and equipment;

(b) the design, purchase, installation, construction, replacement and maintenance of facilities or landscaping within (or, with respect to landscaping, adjacent to) the Common Areas; provided, however, no capital costs associated with the Equestrian Center and incurred during the five year period commencing with the date the Equestrian Center becomes a part of the Development or a Common Area shall be included in any sums for which the Association is assessing the Owners;

(c) all professional fees and all court costs incurred in any litigation in which the Association becomes a party;

(d) all sums payable by the Association pursuant to any contract entered into by the Association; and

(e) any other costs and expenses incurred by the Association in connection with the performance of its functions under this Declaration.

The Association shall also have the right to assess the Owners for and collect funds for such reserves and to expend sums out of such reserves as the Board may determine to be appropriate.

8.02. Covenants For Assessments. Declarant, for itself and each successor Owner, hereby covenants to pay to the Association or its designee its Regular Group Assessment, Special Group Assessment and Special Individual Assessment as and when due pursuant to this

Article VIII. The covenant contained in this Section 8.02 shall become binding on each Owner by virtue of such Owner's acceptance of a deed or other instrument of conveyance of a Lot, regardless of whether the covenant be contained in or otherwise referred to in such deed or other instrument of conveyance, and shall be deemed to constitute a portion of the purchase money consideration for the acquisition of the Lot.

8.03. Annual Budget; Regular Group Assessments. For or during each fiscal year of the Association, the Board shall adopt a budget for the Association for that fiscal year. Each budget shall reflect, inter alia, the total anticipated collections and expenditures for such year and a reasonable reserve for replacements and other contingencies. It is anticipated that a separate budget will be adopted for each fiscal year; however, for any year as to which the Board does not adopt a budget, the budget for the preceding year shall continue and be deemed to be adopted by the Board as the budget for the current fiscal year. In such latter event, the date of adoption shall be deemed to be the first day of the current fiscal year. Subject to the last sentence of this Section 8.03, the Regular Group Assessment for each fiscal year shall be the total amount of the annual budgeted expenditures adopted by the Board with respect to that fiscal year which are determined by the Board to be generally applicable to the entire Development (and thus which will not include any budgeted expenditures for such year which the Board has designated to be covered by a Special Group Assessment pursuant to Section 8.04(b) hereof). A Regular Group Assessment shall be payable by all Owners of record on the applicable Record Date. The Regular Group Assessment for any Owner shall equal the product of the total Regular Group Assessment for such year multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of Lots on the applicable Record Date. If, at the end of any fiscal year, the Association has surplus funds on hand attributable to any prior or the current year's Regular Group Assessments (including the interest income thereon), the Board may, at its discretion, either reduce the Regular Group Assessment for the following year by an equivalent amount or add the surplus to the reserve fund maintained by the Association.

8.04. Special Group Assessments. In addition to the Regular Group Assessments provided for in Section 8.03 hereof, the Association may, at any time and from time to time, levy a Special Group Assessment for the purpose of covering any proper expenditure of the Association (a) for which no provision was made in the annual budget or (b) which benefits only a particular category or group of Owners. A Special Group Assessment shall be payable by either all Owners of record on the applicable Record Date or those Owners of record on such date which the Association has determined constitute a discrete group which will be directly and principally benefitted by the expenditure. An Owner's share of a Special Group Assessment shall equal the product of the total Special Group Assessment multiplied by a fraction, the numerator of which is one and the denominator of which is

(y) the total number of Lots on the applicable date (where the Special Group Assessment is to be paid by all Owners), or (z) the total number of Lots which the Association has determined have been or will be directly benefited by the expenditure of the funds raised pursuant to the Special Group Assessment (where the Special Group Assessment is to be paid by certain categories or groups of Owners).

8.05. Special Individual Assessments. In addition to the Regular Group Assessments and the Special Group Assessments, the Association may, at any time and from time to time, levy a Special Individual Assessment on any Owner for the purpose of paying for, or reimbursing the Association for its prior payment of:

- (a) all direct and indirect costs of repairing, replacing or restoring of any damaged Improvements, trees or other vegetation subject to the conditions precedent that (i) the Board has determined, in its sole discretion, that the damage has been caused, directly or indirectly, by the acts or omissions of the Owner or its employees, contractors, agents, Occupants or invitees, (ii) the Board has notified the Owner involved of the Board's determination and has afforded the Owner ten days within which (A) to introduce evidence effectively rebutting the Board's determination or (B) to repair, replace and restore the damaged Improvements, trees or other vegetation to the satisfaction of the Association (if the damage was to Improvements, trees or other vegetation within a Common Area) or to another Owner (if the damage was to Improvements, trees or other vegetation owned by the other Owner) and (iii) within the ten day period, the Owner has failed to introduce evidence which effectively rebuts the Board's determination or to repair, replace or restore the damaged Improvement.
- (b) all direct and indirect costs of performing any construction, maintenance, repair, replacement, restoration, rebuilding, razing or other obligation which an Owner was obligated, but failed, to perform under the Governing Documents, subject to the conditions precedent that (i) the Board has determined, in its sole discretion, that the Owner has not performed the obligation in accordance with the Governing Documents, (ii) the Board has notified the Owner involved in writing of the Board's determination and has afforded the Owner ten days within which (A) to introduce evidence effectively rebutting the Board's determination or (B) to perform the obligation in the manner required in the Governing Documents and (iii) within the ten day period, the Owner has failed to introduce evidence which effectively rebuts the Board's determination or to perform the obligation in the manner required.

If an Owner commences corrective action on any matter for which a Special Individual Assessment may be levied against the Owner under this Section 8.05 after the Association has also commenced any corrective action with respect thereto (including the expenditure of sums and the entry into contractual undertakings), the Owner shall be obligated to the Association for the direct payment or the reimbursement to the Association of all liabilities and expenditures incurred or made by the Association in connection therewith.

8.06. Payment of Assessments; Bank Accounts; Investments. Regular Group Assessments and Special Group Assessments shall be due and payable at such time or times as the Board, in its discretion, may determine. Special Individual Assessments shall be due and payable on demand. Any Assessment (Regular Group, Special Group or Special Individual) which is not paid when due shall accrue interest at the rate specified in Section 11.12 hereof from the date due until the date paid. All Assessments paid to the Association and all other funds of the Association shall be deposited in one or more bank accounts, established by or under the direction of the Board, in the name of the Association. No funds of the Association shall be commingled with the funds of any other Person in any bank account. Association funds may be withdrawn from Association accounts only by duly authorized officers of the Association. Pending their disposition for Association purposes, all Association funds may, at the Board's discretion and direction, be invested in such securities as the Board may select (other than securities issued by Declarant, the Association, any Owner other than a company listed on a national stock exchange or any Affiliated Person other than a company listed on a national stock exchange) including but not limited to savings accounts, certificates of deposit, money market accounts, commercial paper, banker's acceptances, government obligations and shares of registered investment companies. Such funds may also, at the Board's discretion, be maintained in non-interest bearing accounts. Association funds shall be withdrawn from Association accounts only by duly authorized Persons and spent only for proper Association purposes.

8.07. Enforcement. Assessments shall be personal and individual debts of the Owner to whom the Assessment pertains. No Owner may, for any reason and in any manner, exempt itself from liability for the payment of an Assessment. The Association shall have the right to accept partial payment of any Assessment or reject partial payment and to demand full payment thereof. If the Association elects to accept any partial payment, it shall do so on account only and without in any way waiving any rights, remedies or recourses against the Owner for the balance of the Assessment. The obligation of an Owner to pay Assessments imposed on it during the Owner's period of ownership shall remain the Owner's personal obligation, and a sale, assignment or other transfer of the Owner's interest in the Lot shall not, to any extent and in any respect, release the Owner

from such liability, even if the grantee, assignee or other transferee of the interest in the Lot expressly assumes the repayment of all prior Assessments. Accordingly, the Association's Lien shall continue in full force and effect after, and be unaffected by, any sale, assignment or other transfer of an interest in a Lot. Other than pursuant to a request made in accordance with Section 11.07 hereof, the Association shall have no duty to advise any Owner, any proposed Owner or any other party as to whether any delinquent Assessments exist with respect to an Owner.

8.08. Lien and Foreclosure. Declarant, on behalf of the Association, hereby establishes, reserves, creates and subjects all Lots to the Association's Lien, which shall be a first and prior lien. Declarant hereby assigns, without recourse, the Association's Lien to the Association. The Association's Lien shall be self operative, shall arise by virtue of the conveyance by Declarant of any Lot to the first Owner thereof and shall continue thereafter in inchoate form without the necessity that any deed of trust, mortgage or other document be executed or granted, or that such lien be reserved in or referred to in any deed or other conveyance document, or that any other action be taken by any party. The Association's Lien shall secure the repayment to the Association of all sums due by an Owner to the Association pursuant to any of the Governing Documents, including but not limited to the Owner's share of any Regular Group Assessment or Special Group Assessment, the Owner's Special Individual Assessment, all attorney's fees, court costs and other expenses incurred by the Association in collecting or attempting to collect such amounts, or in foreclosing or attempting to foreclose the Association's Lien or otherwise in exercising any of its rights, remedies or recourses hereunder or thereunder, and interest thereon as permitted hereunder. Although no further action is required to create or perfect the Association's Lien, the Association may, as further evidence and notice of the Lien, execute and record a document setting forth, as to any Lot or Lots, the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment of same. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the Association's Lien. The Association's Lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in like manner of any deed of trust on real property. At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, any Owner and any Affiliated Person, shall have the right to bid upon and become the purchaser of the property being sold.

8.09. Lien Subordination. The Association's Lien shall become subordinate and inferior to any first lien deed of trust or first lien mortgage granted by an Owner in favor of any financial institution to secure the repayment of funds advanced by such financial institution, on any term basis, for the purchase of a Lot and the construction or purchase of the

Improvements thereon, or for the refinancing of a loan previously made for such purpose. This subordination shall apply only to sums that have become due to the Association prior to the granting of a foreclosure deed, a "deed in lieu" or other similar conveyance to the holder thereof or its designee. No foreclosure sale or other transfer made pursuant to any such financing transaction shall extinguish or impair, to any extent, the obligation of any new Owner to pay all sums thereafter due by it to the Association or the Association's Lien on the Owner's Lot. Within five days prior to the date that any Owner proposes to place a lien on its Lot which, pursuant to the first sentence of this Section 8.09, will become superior to Association's Lien, the Owner shall deliver written notice to the Association identifying the full name, address and telephone number of the proposed lender, the amount of the loan, and the uses to which all of the loan proceeds will be spent. The Association may, from time to time at its own initiative and without any liability to any Owner or any third party as a consequence thereof, (a) subordinate the Association's Lien to other debt instruments, (b) notify any lender if any amounts due to the Association by an Owner of a Lot with respect to which such lender holds a lien become delinquent and (c) take, or refrain from taking, any other action with respect to the Association's Lien. It shall be a condition precedent to the effectiveness of a subordination of the Association's Lien pursuant to this Section 8.09 that the lienholder as to which the Association's Lien is subordinated agree in writing with the Association to give the Association written notice at least five days before the lienholder forecloses its lien on the Lot or takes (itself or its designee) a "deed in lieu" or other similar conveyance thereof.

8.10. Common Areas Exempt. All Common Areas shall be exempt from all Assessments and the Association's Lien.

ARTICLE IX

Easements

9.01. General. Declarant hereby establishes, creates and reserves, for itself, the Association and such assignees or designees as they may deem appropriate, (a) a perpetual, non-exclusive easement under, across and over the entirety of the Development for the installation, operation, modification, maintenance, repair, replacement, removal and reinstallation of all electrical, lighting, telecommunication, CATV, water, gas, sanitary sewer, storm sewer, drainage and other utility facilities and appurtenances thereto, (b) a perpetual, non-exclusive easement under, across and over the Common Areas for the purpose of performing therein any activity which the Association is required or permitted to perform pursuant to the Governing Documents, and (c) a perpetual, non-exclusive easement across the entirety of the Development for the construction, operation,

modification, maintenance, repair, replacement, removal and reconstruction of a bridle path to be associated with the Equestrian Center or one or more pedestrian access easements. The easements herein reserved may, from time to time, be more precisely located in the Development Standards or by Declarant (prior to the Conversion Date) and the Association (upon and after the Conversion Date) executing and recording in the appropriate public records a plat or other instrument (including deeds) so designating a particular location or locations. The easements herein reserved shall include the right of ingress and egress to and from each Lot for the purpose of implementing the purposes of the easements together with the right to remove any obstructions which, from time to time, interfere with the reasonable use of the easements. Declarant shall have the right to assign the easements herein reserved to the Association or, in the case of the easement referred to in clause (a) hereof, to one or more companies furnishing the services therein referred to. Declarant or the Association (as the case may be) shall have the right (y) to relocate any easement referred to in clause (a), (b) or (c) hereof under, across or over any Lot without the consent of or any compensation being payable to the Owner thereof, provided that the relocation does not materially and adversely affect the utility, value or marketability of the Lot and (z) to subject the Development to a contract with one or more public utility companies for the installation of underground electrical cables and/or street lighting, which may require an initial payment and/or a continuing monthly payment by the Owners, or groups thereof.

ARTICLE X

Declarant's Option to Repurchase

10.01. Covenant to Construct Improvements. Each Owner which acquires a Lot from Declarant, by accepting a deed to its Lot, shall conclusively be deemed to have covenanted with Declarant, as a covenant running with the title to the Lot and as a personal covenant of the Owner, (a) to prosecute diligently the preparation of the submittals described in Section 4.04 hereof to the end that Approved Plans result therefrom, and to commence and thereafter to perform in good faith substantial construction of the Residence described in the Approved Plans, all within two years after the date the Lot is conveyed to the Owner and (b) to complete the construction of all Improvements reflected on the Approved Plans, in strict accordance therewith and with the Governing Documents, within three years after the date the Lot is conveyed to the Owner. The covenant contained in the preceding sentence shall be deemed to have been made by and shall be binding upon each Owner regardless of whether it was stated or otherwise referred to in the deed. For purposes of this Article X, the term "substantial construction" shall mean, with respect to any Residence, that the foundation therefor has been constructed, that all exterior walls therefor have been erected, that the roof thereof has been constructed and that the

Residence has been completely weatherproofed. Upon an Owner's satisfaction of its obligation to substantially construct its Residence as and when required in clause (a) hereof, Declarant shall, at the request and expense of the Owner, execute a recordable certificate which reflects such fact. Upon an Owner's satisfaction of its obligation to complete the construction of its Improvements as and when required in clause (b) hereof, Declarant shall, at the request and expense of the Owner, execute a recordable certificate which confirms such fact and waives Declarant's option to repurchase contained in Section 10.02 hereof.

10.02. Option to Repurchase. If an Owner has not prepared its submittals and performed in good faith substantial construction of its Residence as and when required under Section 10.01(a) hereof, or if an Owner has not completed the construction of its Improvements as and when required under Section 10.01(b) hereof, Declarant shall have the unrestricted right and option (but not the obligation), which Declarant may exercise at any time within five years after the expiration of the two-year period referred to in Section 10.01(a) hereof, or the three year period referred to in Section 10.01(b) hereof (whichever is first applicable), to repurchase the entirety of the Lot and any Improvements thereon in the manner herein provided. Declarant may exercise its option to repurchase by the giving of a written "exercise notice" to the Owner in which Declarant states that it has affirmatively exercised its option to repurchase the Lot. All conveyances of Lots by Declarant shall be deemed made and accepted subject to the aforesaid option, and on the condition that the Owner thereof reconvey the Lot to Declarant upon the timely exercise by Declarant of its option to repurchase.

10.03. Reconveyance. If Declarant is entitled to exercise, and has timely exercised, its option to repurchase a Lot, then the reconveyance thereof to Declarant shall occur at Declarant's principal office on the date specified in Declarant's exercise notice, which date shall not be later than ninety days after the date of such notice. At the reconveyance, the following shall occur:

- (a) the Owner shall execute, have acknowledged and deliver to Declarant a general warranty deed conveying the Lot to Declarant free and clear of all liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral or otherwise), conditions, restrictions, reservations, options, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, overlaps or other outstanding claims, rights, titles, interests, estates or equities of any nature whatsoever other than any of the aforesaid as to which the deed executed by Declarant

conveying the Lot to the Owner was subject or which subsequently arose with the express written consent of Declarant;

- (b) the Owner shall execute, have acknowledged and deliver to Declarant such corporate or partnership resolutions, opinions of counsel, certifications and other documents as Declarant may request to evidence, confirm or perfect the due authorization, execution and delivery of the aforesaid general warranty deed;
- (c) the Owner shall cause to be issued to Declarant an owner's policy of title insurance, issued by such issuer and containing such exceptions as are acceptable to Declarant, the cost of which shall be borne by the Owner; and
- (d) Declarant shall pay to or for the account of the Owner an amount equal to the original purchase price actually paid by the Owner to Declarant as consideration for the sale of the Lot to be reconveyed to Declarant minus (i) all indebtedness secured by a lien against the Lot (including sums due the Association), (ii) all accrued but unpaid ad valorem taxes or other assessments or impositions of any kind then existing on or assessed against the Lot, (iii) all sums paid or payable by Declarant to any Person so as to cause the title to the Lot to be in the condition required under Section 10.03(a) hereof and (iv) any commissions, legal fees, survey expenses, title policy premiums, closing costs and other expenses originally paid by Declarant in connection with the sale of the Lot to the Owner.

If an Owner obligated to do so fails to reconvey its Lot to Declarant as and when required hereunder, Declarant shall have all of the rights, remedies and recourses which are afforded at law or in equity to a purchaser under a contract of sale of real estate with respect to which the seller has wrongfully refused to convey the real estate as required therein to the purchaser.

10.04. Delivery of Possession. Coincident with any conveyance of title to a Lot to Declarant pursuant to this Article X, possession of the Lot shall also be delivered to Declarant free and clear of all outstanding claims by third parties.

10.05. Priority. Declarant's rights and options contained in this Article X shall be prior and superior to all liens, security interests and claims including those as to which the Association's Lien is subordinated pursuant to Section 8.09 hereof. Accordingly, the reconveyance of any Lot to Declarant pursuant to this Article X shall effect the

termination and discharge of all liens, security interests and claims to the same extent as if Declarant had foreclosed a first and prior deed of trust lien on the Lot, and Declarant shall acquire title to the Lot free and clear of all such liens, security interests and claims.

10.06. Modification. The rights and options of Declarant contained in this Article X are intended solely to benefit and protect Declarant and, accordingly, may be exercised or waived solely by Declarant. Thus, Declarant may, as to any or all Lots, at any time or from time to time and at its sole election, (a) extend the two-year and three-year periods referred to in Section 10.01 hereof, (b) reduce the five-year period set forth in Section 10.02 hereof, (c) subordinate or waive any or all of Declarant's rights and options under this Article X to any Person and on any terms or (d) otherwise modify, release or terminate any or all of Declarant's rights and options under this Article as to any Lot. If Declarant takes any action described in clauses (a) through (d) hereof as to any Person or Lot, such election shall be applicable only to that specific instance and shall not form a precedent for requiring Declarant to take any similar or other action with respect to any other Person or Lot, nor shall it constitute a diminishment, waiver, dilution or diminution of the rights and options of Declarant under this Article X with respect to any other Owner or as to any other Lot.

ARTICLE XI

Miscellaneous

11.01. Term. The covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, burdens, liens, terms and provisions set forth in this Declaration shall be personal covenants of each Owner, shall run with the title to the land subject to this Declaration and shall be binding upon and inure to the benefit of Declarant, the Association and each Owner, and their respective heirs, successors and assigns. This Declaration shall become effective upon the date it is recorded in the Registry of Wake County, North Carolina and, subject to the provisions of Section 11.02 hereof, shall remain effective for fifty years thereafter. If, at the conclusion of the said fifty year period, or at the conclusion of any ten year period thereafter during which this Declaration remained in effect, this Declaration has not been terminated pursuant to Section 11.02 hereof, it shall remain automatically effective for an additional ten year period.

11.02. Amendment; Termination. This Declaration may be amended and terminated only in accordance with this Section 11.02.

- (a) Prior to the Conversion Date, Declarant shall have the sole and exclusive right, power and authority to amend this Declaration, subject to the

limitations that no amendment shall be adopted, or if adopted shall become effective, which materially and adversely affects the rights of (i) any Owner which is then a Member in good standing, or the utility, value or marketability of the Owner's Lot, without the affirmative vote of the Owner or (ii) any lender holding a superior lien on a Lot without the prior written consent of such lender.

- (b) Prior to the Conversion Date, this Declaration may be terminated by (i) the affirmative vote, by the Class A Members, of at least sixty-six and two-thirds percent of the total votes which those Class A Members in good standing at the time are entitled to cast plus (ii) the affirmative vote, by the Class B Members, of at least sixty-six and two-thirds percent of the total votes which the Class B Members are entitled to cast.
- (c) Upon and after the Conversion Date, this Declaration may be amended by the affirmative vote, by the Class A Members, of at least sixty-six and two-thirds percent of the total votes which those Class A Members in good standing at the time are entitled to cast (other than an amendment to Section 11.01 hereof or this Section 11.02(c), which shall require the affirmative vote of at least seventy-five percent of such votes).
- (d) Upon and after the Conversion Date, this Declaration may be terminated by the affirmative vote, by the Class A Members, of at least seventy-five percent of the total votes which those Class A Members in good standing at the time are entitled to cast.

No amendment to or termination of this Declaration shall become effective until the requisite votes are affirmatively cast therefor and a written instrument, duly executed by Declarant (prior to the Conversion Date) or a duly authorized officer of the Association (upon and after the Conversion Date), setting forth the specific amendment to this Declaration or stating that this Declaration has been terminated, is executed and recorded in the appropriate public records.

11.03. Correction of Errors. During the existence of this Declaration, the Board shall have full right, power and authority to correct errors in this Declaration which the Board determines to be of a clerical or otherwise nonsubstantive nature. Such corrections shall not be deemed an amendment hereto for purposes of the voting requirements of Section 11.02 hereof but shall, upon being made by the Board, become binding on all Owners.

11.04. Enforcement. The Association shall initially have the exclusive right, power and authority to enforce (or to elect not to enforce) any or all of the terms of this Declaration by any legal proceedings, at law or in equity, against any Person violating or attempting to violate any of them, or to seek any other recourse against any such Person whether the recourse sought is an injunction, the recovery of damages, the foreclosure of the Association's Lien or otherwise. If the Association does not exercise its rights, remedies or recourses afforded for a violation of this Declaration as to which no Variance was granted, then any Owner may give written notice to the Association demanding that the Association exercise such rights, remedies or recourses. If, within thirty days after its receipt of the Owner's notice, the Association does not commence to exercise such rights, remedies or recourses against the Person violating this Declaration, then the Owner sending the notice may exercise any or all of the rights, remedies and recourses afforded the aggrieved Owner against such Person at law or in equity as a consequence of such violation, but no claim shall lie against any Exculpated Person as a consequence of the Association's failure to act.

11.05. Responsibility of Owner; Breach is Nuisance. Each Owner shall be responsible for any breach of this Declaration which is the result of the acts or omissions of the Owner, or its officers, directors, shareholders, partners, employees, contractors, agents, invitees or Occupants. Any breach of this Declaration by an Owner or such other Persons is hereby declared to be a nuisance. Accordingly, every right, remedy or recourse allowed by law or equity as a result of, or with respect to the abatement of, any such nuisance is hereby declared to be available to the Association or, subject to the provisions of Section 11.04 hereof, any aggrieved Owner.

11.06. Applicable Law. This Declaration shall be governed by, and construed in accordance with, the laws of the State of North Carolina. All monetary and other obligations of any Owner hereunder are performable in Wake County, North Carolina.

11.07. Compliance Certificate. Upon the written request of any Owner or the holder of any first lien deed of trust or first lien mortgage on any Lot, the Association shall issue a certificate stating whether the Owner is delinquent in the payment of any sum due the Association or whether, to the knowledge of the Association, the Owner is otherwise in violation of this Declaration. The Association may impose and collect from the Owner with respect to which the certificate is requested a reasonable charge as a condition to the issuance thereof.

11.08. Notices. All notices and other communications given pursuant to this Declaration shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth

in this Section 11.08, or delivered in person to the intended addressee, or sent by prepaid telegram, cable or telex followed by a confirmatory letter. Notice mailed in the aforesaid manner shall become effective three days after deposit; notice given in any other manner, and any notice given to Declarant or the Association, shall be effective only upon receipt by the intended addressee. For the purposes of notice, the address of (a) Declarant shall be 4224 Six Forks Road, Raleigh, North Carolina 27609, (b) the Association shall be 4224 Six Forks Road, Raleigh, North Carolina 27609 and (c) any Owner shall be its last address as shown on the records of the Association at the time the notice is sent. Declarant, the Association and any Owner shall have the continuing right to change its address for notice hereunder by, in the case of a change of address by an Owner, the giving of fifteen days prior written notice to the Association in accordance with this Section 11.08, or, in the case of a change of address by Declarant or the Association, at the election of Declarant or the Association either the execution of a supplement to this Declaration reflecting such change of address and the recording of same in the appropriate public records or the giving of written notice to each Owner of record in the manner set forth above.

11.09. Severability. This Declaration and the other Governing Documents are to be performed in accordance with and only to the extent permitted by applicable legal requirements. If any provision of this Declaration or any other Governing Document or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Declaration and the other Governing Documents and the application of such provision to other Persons or circumstances shall not be effected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.10. Number and Gender, Captions and References. As the context of this Declaration may require, pronouns shall include all Persons, the singular number shall include the plural and the neuter shall include the masculine and the feminine gender. Article and section headings in this Declaration are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any article or section hereof. Whenever the word "hereof", "herein", "hereunder" or a word of similar import is used in this Declaration, it shall be construed as referring to this Declaration in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Declaration.

11.11. Attorney's Fees. If Declarant, the Association or any Owner entitled to do so initiates any litigation against any Owner relating to this Declaration, and prevails in such litigation, or if Declarant, the Association or any Owner defends against any litigation brought against it by any Owner (other than Declarant) relating to this Declaration and

prevails in such litigation, then the prevailing party shall be entitled to recover, in addition to all damages and other relief allowed by law, all court costs and reasonable attorney's fees incurred in connection with such litigation.

11.12. Interest On Owner's Obligations. Any amount due from an Owner to the Association pursuant to this Declaration which is not paid when due shall bear interest at the maximum rate allowed by law (or, if there is no maximum rate on the date the amount becomes due, at the rate of twenty percent per annum) from the date the amount becomes due until the date the amount is paid, but the payment of such interest shall not excuse or cure the default in payment. It is the specific intent of Declarant to at all times comply with applicable usury law with respect to this Declaration. Accordingly, if, at any time, it is determined that any amount called for, charged or collected pursuant to this Declaration exceeds the amount which may be lawfully called for, charged or collected under applicable usury law then all excess amounts theretofore collected by the Association shall be immediately refunded to the payor, the provisions hereof shall be immediately deemed reformed and the amounts thereafter collectible hereunder shall be immediately deemed reduced without the necessity of the execution of any new document so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

11.13. Incorporation By Reference. Each exhibit hereto is incorporated herein for any and all purposes.

11.14. Interpretation. If any disagreement shall arise between or among Owners as to the interpretation or application of this Declaration or any other Governing Document, the disagreement shall be resolved by the Board and the determination of the Board shall be final and binding upon all Owners unless the determination was fraudulently induced or arbitrarily or capriciously rendered.

11.15. Waiver. This Declaration may not be waived orally or impliedly, but only by Declarant (prior to the Conversion Date) or the Association (upon and after the Conversion Date) evidencing such waiver in writing. Thus, neither the acceptance of a payment by the Association nor any other custom or practice followed in connection with this Declaration shall constitute a waiver of any provision hereof. Further, neither the failure of the Association to complain of any violation of this Declaration, regardless of how long such failure continues, nor the failure of the Association to invoke (or the election by the Association not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the Association with respect to such violation. No waiver by the Association of any provision of this Declaration as to any Owner shall be deemed to be a waiver of any other

provision hereof as to such Owner, or a waiver of the same provision as to any other Owner. The Association's consent to any act requiring the Association's consent hereunder or under any other Governing Document shall not be deemed to render unnecessary the attaining of the Association's consent as to any other act. No consent shall be binding upon the Association unless such consent is evidenced in writing executed by an officer of the Association duly authorized to execute the same.

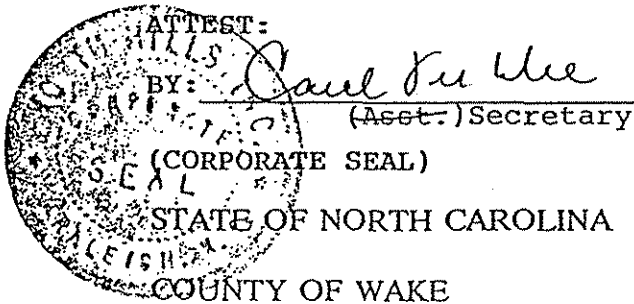
11.16. Owner's Liability; Subsequent Sale. Upon the divestiture (voluntarily or involuntarily) of its Lot, the prior Owner shall thereupon be relieved of all liability for breaches of this Declaration with respect to such Lot arising after the date of divestiture. The preceding sentence shall not, in any way and to any extent, impair the Association's Lien against the Lot for sums due the Association by the prior Owner or any subsequent Owner, or the obligation of the subsequent Owner for any liabilities accruing after the date of divestiture.

11.17. Exculpation. No Exculpated Person shall be personally liable for any debts contracted for or otherwise incurred by Declarant or the Association, or for any tort committed by any other Person (whether acting on behalf of Declarant, the Association, or any other Person at the time of commission). No Exculpated Person shall be personally liable for any other act or omission of any nature whatsoever occurring in the course of acting under or in connection with this Declaration, except the Exculpated Person's own gross negligence, willful misconduct or criminal conduct. Without in any way limiting the generality of the foregoing, no Exculpated Person shall have any liability of any nature whatsoever by virtue of any action taken or not taken with respect to any plans, drawings, specifications, documents, materials and requests for Variances presented to it for review and approval, or for the condition of any Improvements within the Development, or for the failure to inspect or repair any Improvements within the Development, and under no circumstance shall any Exculpated Person be deemed to have passed upon the structural integrity, safety or compliance with any Legal Requirements of any Improvement described on or in any such materials. In addition to such indemnification as may be contained in the Articles of Incorporation or ByLaws of the Association, the Association hereby agrees to defend, indemnify and hold harmless all officers, directors, shareholders, Members and Committee Members of the Association, and their heirs and legal representatives, against all liability (contractual and otherwise) arising out of any contracts entered into by the Association, or any acts or omissions of such officers, directors, Members or Committee Members when acting on behalf of the Association unless (in the case of the wrongdoer) such liability arises out of an indemnified person's own gross negligence, willful misconduct or criminal conduct. The foregoing indemnification shall extend to all costs and expenses (including, but not limited to, reasonable attorney's fees and court costs, amounts of judgment paid and amounts paid

in settlement) actually or reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or otherwise, in which any such indemnified person may become involved; provided, however, that such indemnification shall not be operative to an indemnified person with respect to any matter settled or compromised unless, in the opinion of independent counsel selected by the Board, there is no reasonable ground for such indemnified person being adjudged liable for gross negligence, willful misconduct or criminal conduct in the claim at issue.

11.18. Perpetuities. If any provision of this Declaration shall be void or voidable as written for violation of the Rule Against Perpetuities, then such provision shall be deemed modified to continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

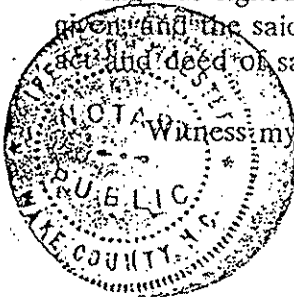
IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the date and year above first written.



NORTH HILLS, INC.

By James A. Walker
James A. Walker, President

This 23 day of September, 1993, personally came before me, a notary public in and for said County and State, James A. Walker, who, by me being duly sworn, says that he is the President of North Hills, Inc. and that the seal affixed to the foregoing instrument in writing is the official corporate seal of the said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given, and the said James A. Walker, President, acknowledged the said writing to be the act and deed of said corporation.



Witness my hand and official stamp or seal, this 23 day of September, 1993.

Irene D. Webster
Notary Public
My Commission Expires: 11-19-94

klm\wakefile\cov2nd.doc
08/20/93

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of

Irene D. Webster
Notary Public is

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

Kenneth C. Wilkins Register of Deeds
By Ragna R. Cooke
—Asst/Deputy Register of Deeds

Property Description

That certain tract or parcel of land containing 122.34 acres, more or less, situated in Wake County, North Carolina and being more particularly described on the plat entitled "Wakefield - Phase 1", dated July 30, 1993 prepared by Bass, Nixon & Kennedy, Inc., Raleigh, North Carolina, and recorded in Map Book 1993 at Pages 1234 and 1235 of the Registry of Wake County, North Carolina.

EXHIBIT "A"