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NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTION FOR
THE TOWNHOUSES EAST NEIGHBORHOOD OF
THE VILLAGES OF TRYON COMMUNITY

Made by:
Westfield Homes of North Carolina, Inc.

Return to: W. Travis Barkley
4700 Home wood Ct
STE 110
Raleigh, NC 27609

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions for the Townhouses East Neighborhood of The Villages of Tryon Community (the "Declaration") is made and entered into on this 24 day of March, 2000, by WESTFIELD HOMES OF NORTH CAROLINA, INC., a North Carolina corporation (hereinafter referred to as the "Declarant").

RECITALS

1. This Declaration is made by the Declarant pursuant to Article Two of that certain Master Declaration of Covenants, Conditions and Restrictions for The Villages of Tryon Community, made by Declarant, recorded in Book , Page , Wake County Registry (as amended from time to time, the "Master Declaration"), in order to provide for the efficient preservation of the values and amenities of and the governance of the neighborhood to be burdened and benefited hereby.
2. Declarant is the owner of the real property described in Article One of this Declaration and desires to create thereon a townhouse neighborhood together with streets, roads, bike paths, footways, open spaces, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any Recorded Plat (as hereinafter defined) (sometimes referred to collectively herein as the "Facilities") for the benefit of such townhouse neighborhood.
3. Declarant desires to subject the real property described in Article One to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof.
4. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in The Townhouses East Neighborhood (hereinafter defined), to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Townhouses East Neighborhood properties and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created.
5. Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina a non-profit corporation, the The Villages of Tryon Community Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

DECLARATION

NOW THEREFORE, the Declarant declares that the real property described in Article One, and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth, and furthermore that the "covenants and restrictions" herein shall entirely replace, supersede, and be in lieu of the terms, conditions, and covenants of the Original Declaration as if this Declaration had been recorded originally in place of the Original Declaration.

The covenants, conditions and restrictions imposed herein shall be in addition to, and not in lieu of any other covenants, conditions and restrictions currently encumbering any portion of the Townhouses East Neighborhood, specifically including but not limited to, the covenants, conditions and restrictions contained in the Master Declaration. Notwithstanding the foregoing, however, any provision hereof that specifically states that it replaces a provision in the Master Declaration as to any property hereby burdened does so. Declarant's execution hereof evidences its consent as Declarant under the Master Declaration to any such implied amendments to the Master Declaration.

Wake County, NC 542
Laura M Riddick, Register Of Deeds

Presented & Recorded 03/28/2000 14:31:45

Book : 008548 Page : 01788 - 01815

ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION

Section 1.1 Existing Property. The real property which is, and shall be, held, used, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Wake County, North Carolina, and is or will be commonly known as the Townhouses East Neighborhood of The Villages of Tryon Community, and is more specifically described on Exhibit A attached hereto and incorporated herein by reference.

Section 1.2 Additions to Existing Property. Real property in addition to the Existing Property may hereafter become subject to this Declaration in the following manner:

a. Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that adjoins or is otherwise in the immediate vicinity of the Existing Property, as added to under the terms hereof, but such right shall cease to exist on January 1, 2010.

The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Wake County one or more supplementary Declarations of Covenants, Conditions and Restrictions for the Townhouses East Neighborhood with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of the Declaration to such additional property or properties (hereinafter sometimes referred to as a "Supplemental Declaration"). The Supplemental Declaration shall be approved by the City Attorney (hereinafter defined).

Any Supplemental Declaration(s) may specify such specific use restrictions and other covenants, conditions and restrictions to be applicable to the added property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant and, if different owner(s), the owner(s) of the additional property, to reflect and adapt to any difference in character of the added properties. In no event, however, shall any such supplementary Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the Existing Property, however, this proviso shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the "assessments" (as hereinafter defined) payable by a Member of the Association by reason of any such additions.

b. Other Additions. Upon approval in writing of the Association, pursuant to authorization by a two-thirds (2/3) or more vote of each class of Members, voting as provided in Section 8.2 hereof at a duly called meeting, the owner of any property who desires to add such property to the scheme of this Declaration and subject such property to the jurisdiction of the Association must file of record a Supplemental Declaration as described in subsection (a) above. Any approval by the Association pursuant to this subsection shall be evidenced by the Association executing any such Supplemental Declaration(s). The Declarant shall have the right to approve any such addition to the scheme of this Declaration until such time as Class II membership terminates.

c. Mergers, Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights, and obligations of another association may, by operations of law, be added to those of the Association as the surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the restrictions established upon any other properties, as one scheme. No such merger, combination or consolidation, however, shall effect any revocation, change or addition to, the

covenants and restrictions established by this Declaration within the Existing Property, except as herein provided, and no such merger, combination or consolidation shall be effective unless first consented to by the City Attorney (hereinafter defined).

d. Conveyance of Limited Common Areas and/or Limited Common Properties . Following the recording of a Supplemental Declaration, the owner of the additional property shall convey to the Association title of all Limited Common Areas and Limited Common Properties located within the additional property. Title shall be conveyed to the Association in the same manner as set forth in Section 9.3.

Section 1.3 Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a perpetual, non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within the Townhouses East Neighborhood for access to and from other real property of Declarant or its successors and/ or assigns. Such easement shall continue until that time when all new construction has ceased on additions to existing property acquired under this Section 1, and any damage caused by Declarant, its agents, successors and/ or assigns to the private streets and roads within the Townhouses East Neighborhood when exercising its rights created by this Section 1.3 shall be repaired at the expense of Declarant, its successors and/or assigns. In addition, an easement and right of ingress, egress and regress over and across, all private streets and roads within the Townhouses East Neighborhood, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

ARTICLE TWO: INTENTIONALLY OMITTED.

ARTICLE THREE: DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

"Assessment (s)" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Lots or Improved Lots in the Townhouses East Neighborhood and shall include annual, special and Special Individual Assessments as described in Article Ten of this Declaration.

"Association" shall mean and refer to the The Villages of Tryon Community Homeowners Association, Inc.

"Board" shall mean and refer to the Board of Directors of the Association.

"Builder" shall mean and refer to a person or entity who in the regular course of business purchases Lots and becomes the Owner of such Lots solely for the purpose of constructing improvements thereon for resale to their successors and assigns and not for the purpose of residing in such improvements. No successor or assignee of Builder shall have any rights or obligations of a Builder hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law. The rights and obligations set forth herein of a Builder shall cease when all of the Lots owned by such Builder have been purchased and settled on by an Owner or Owners other than Builder or Declarant or as otherwise provided in Section 10.13.

"Bylaws" shall mean and refer to the bylaws of the Association and all amendments thereto.

"City Attorney" shall mean and refer to the City Attorney or the Deputy City Attorney of the City of Raleigh, North Carolina, or anyone authorized by either of them to act on their behalf.

"Committee" shall mean and refer to the architectural control committee established pursuant to Article Five hereof.

"Common Expenses" shall mean and refer to:

- a) Expenses of administration, operation, utilities, maintenance, repair or replacement

of the Limited Common Properties owned in fee, including payment of taxes and public assessments levied against the Limited Common properties.

- b) Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
- c) Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Townhouses East Neighborhood, in accordance with the Bylaws or this Declaration.
- d) Any valid charge against the Association or against the Limited Common Properties as a whole.
- e) Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation.

"Declarant" shall mean and refer to Westfield Homes of North Carolina, Inc., a North Carolina corporation, its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Wake County Registry.

"Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family townhouse, irrespective of the number of Owners thereof (or the form of ownership) located within the Townhouses East Neighborhood.

"The Villages of Tryon Community" shall mean and refer to that community consisting of single family lots and residences, multi-family parcels and recreational and supporting facilities, in Wake County, North Carolina, in the City of Raleigh, situated on approximately 25.07 acres of land more particularly described in the Master Declaration, as such declaration and the property encumbered thereby is from time to time amended and supplemented.

"Existing Property" shall have the meaning assigned to it in Section 1.1 of this Declaration.

"Facilities" shall have the meaning assigned to it in the Recitals of this Declaration.

"FHA" shall mean and refer to the United States Federal Housing Authority.

"HUD" shall mean and refer to the United States Department of Housing and Urban Development.

"Improved Lot" shall mean and refer to any improved parcel of land within the Townhouses East Neighborhood which was formerly a Lot and is intended for use as a Dwelling Unit. A parcel of land shall be deemed to be improved when the improvements constructed thereon have received a certificate of occupancy.

"Limited Common Properties" or "Limited Common Areas" shall mean and refer to those areas of land in the Townhouses East Neighborhood described or referred to or shown as "Townhouses East Neighborhood Common Property", "Townhouses East Neighborhood Common Properties", "Townhouses East Neighborhood Common Area", "Townhouses East Neighborhood Common Areas", "Townhouses East Neighborhood Open Space", "Limited Common Property", "Limited Common Properties", "Limited Common Area", "Limited Common Areas", or "Open Spaces" or private streets, private roads, bike paths or pedestrian walking easements (together with all improvements located on any of the foregoing) in any declaration of covenants, conditions and restrictions to which the Townhouses East Neighborhood is submitted or subjected by the Declarant, or on any Recorded Plat, and which are intended to be devoted to the common use and enjoyment of the Members. The Limited Common Properties shall include all water lines, sanitary sewer lines and storm drainage facilities located within or under any private street in the Townhouses East Neighborhood not maintained by any governmental entity. The Limited Common Property shall also include all Recreational Facilities, if any, constructed by the Declarant or the Association, as described in Article Twelve hereof.

"Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Dwelling Unit, which shall not include garages, carports, porches, patios, breezeways, terraces, or basements.

"Lot" shall mean and refer to any unimproved numbered parcel of land within the Townhouses East Neighborhood which is intended for use as a site for a Dwelling Unit, as shown upon any Recorded Plat of any part of the Townhouses East Neighborhood and labeled thereon as a "Lot", and shall not include Improved Lots, Limited Common Properties, or any property in the Townhouses East Neighborhood not yet subdivided for sale as an individual lot. No property in the Townhouses East Neighborhood shall be developed as an Improved Lot until designated as a Lot on a Recorded Plat. Property designated as a Lot may later be designated for some other use on a Recorded Plat.

"Master Association" shall have the meaning assigned to it in Section 9.3 of this Declaration.

"Master Committee" shall have the meaning assigned to it in Section 5.2 of this Declaration,

"Master Declaration" shall have the meaning assigned to it in the Recitals of this Declaration.

"Member" shall mean a member of the Association and shall refer to an Owner in the Townhouses East Neighborhood.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Improved Lot situated upon the Townhouses East Neighborhood. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Member" and "Owner" are meant to describe all of the owners of the Townhouses East Neighborhood interchangeably as semantics dictate throughout this Declaration.)

"Party Structure" shall have the meaning assigned to it in Section 6.9 of this Declaration.

"Plans" shall have the meaning assigned to it in Section 5.2 of this Declaration.

"Raleigh City Code" shall mean and refer to the Code of Ordinances of the City of Raleigh, North Carolina, as amended from time to time.

"Recorded Plat" shall mean and refer to any map of the Townhouses East Neighborhood, or any portion thereof, recorded in the Wake County Registry and executed by the Declarant or the Association to show its consent thereto (and all Owner(s) of such property if different). In any case in which the designation and/or boundary lines of the same property shown on two different Recorded Plats are different (for example, property is designated as a street on one plat and as a Lot on the other, or boundary lines are shown differently on two different Recorded Plats), the designations and boundary lines on the later-recorded of the Recorded Plats shall control.

"Recreational Facilities" shall have the meaning assigned to it in Article Twelve of this Declaration.

"Special Individual Assessments" shall have the meaning assigned to it in Section 10.5 of this Declaration.

"Supplemental Declaration" shall have the meaning assigned to it in Section 1.2 of this Declaration.

"Townhouses East Neighborhood" shall mean and refer to the portion of The Villages of Tryon Community commonly known or to be known as the The Villages of Tryon Townhouses East Neighborhood, described in the Recitals of the Declaration, and shall consist of all Existing Property and any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of Article One hereof.

"VA" shall mean and refer to the United States Department of Veterans Affairs.

ARTICLE FOUR: GENERAL PROVISIONS

Section 4.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit, or, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods

of ten (10) years. This Declaration may be amended in accordance with the provisions of Article 13 hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof.

The termination of this Declaration shall require the assent of at least eighty percent (80%) of the votes in the Association, taken at a meeting duly called and held for this purpose, and shall be evidenced by a termination agreement recorded in the Wake County Registry and otherwise complying with the terms of North Carolina General Statutes Section 47F-2-118.

Section 4.2 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Wake County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Improved Lot to be examined. Notice to any one of the Owners, if title to a Lot or Improved Lot is held by more than one, shall constitute notice to all Owners of that Lot or Improved Lot.

Section 4.3 Enforcement. The Association and / or any Owner may enforce these covenants and restrictions. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions, and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

The Association or the Declarant may impose fines or suspend Townhouses East Neighborhood privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant or the Association. In such circumstances, a hearing shall be held before an adjudicator panel appointed by the Board to determine if an Owner should be fined or if Townhouses East Neighborhood privileges or services should be suspended. If the Board fails to appoint an adjudicator panel to hear such matters, hearings under this section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be Assessments secured by liens as more particularly described in Article Ten hereof. If it is decided that a suspension of Townhouses East Neighborhood privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. No suspension of Townhouses East Neighborhood privileges shall include suspension of rights of ingress and egress, the use of the private streets, or parking privileges.

Section 4.4 Limits on Litigation of the Association. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of sixty-seven percent (67%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to obtain injunctive relief to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided in Sections 10.1, 10.4, 10.5, and 10.9, and (c) proceedings involving challenges to ad valorem taxes. This Section shall not be amended unless such amendment is made by the Declarant during Class II membership and until two years thereafter or is approved by a vote of sixty-seven percent (67%) of the Members,

Section 4.5 Severability. Invalidity of any one of these covenants and restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

ARTICLE FIVE: ARCHITECTURAL CONTROL

Section 5.1 Purposes. The Declarant desires to provide for the preservation of the values in the Townhouses East Neighborhood with respect to vegetation and any improvements to be constructed or altered on any Lot or Improved Lot constituting a portion of the Townhouses East Neighborhood, and to that end, will establish an

architectural control committee, in accordance with Section 5.3 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot or Improved Lot in relation to surrounding structures, natural features and topography.

Section 5.2 Architectural Control. Unless expressly authorized in writing by the Committee, no Dwelling Unit fence, wall, driveway, patio, swimming pool, building or other structure or improvement whatsoever shall be constructed or maintained, nor shall the initial landscaping installed by the Builder be materially changed, nor shall any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio or other building or structure or improvement be started, nor shall any clearing or site work be commenced or maintained upon any Lot or Improved Lot in the Townhouses East Neighborhood, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking decorative landscape planting, floor plans and elevations therefor (all of which is hereinafter referred to collectively as the "Plans"), and any application fee set by the Association, shall have been submitted (the Plans in triplicate) to, and approved in writing by, the Committee, as to harmony of external design and location in relation to any surrounding structure, natural features and topography. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. The Committee may promulgate design standards from time to time to be adhered to by the Plans for the Lots, Improved Lots or Dwelling Units in the Townhouses East Neighborhood. A current copy of all design standards shall be kept on file in the principal office of the Association.

In no event shall the Committee approve any Plans in which the height or setback of the improvements on the Lot or Improved Lot violates the limits established by the City of Raleigh.

Each Improved Lot shall be maintained consistently with the initial landscaping as installed by Builder and approved pursuant to Section 5.3(a). All material changes to the landscaping installed on an Improved Lot shall be first approved by the Committee. The Committee shall have the authority to create landscaping guidelines with which each Improved Lot shall comply.

The architectural control committee created pursuant to the Master Declaration (referred to herein as the "Master Committee") has the right but not the obligation to delegate its rights and duties with respect to the setting of restrictions and the approval of plans to the Committee created hereunder. If the Committee described herein chooses to exercise its right to set restrictions and grant or withhold approval of Plans, the Master Committee may overrule the decision of the Committee described herein only by unanimous vote of the Master Committee.

Section 5.3 Architectural Control Committee.

a) Membership

(i) As to the initial construction of improvements on any Lot prior to conveyance from Builder to homeowner (the "Initial Construction of Improvements"), the Declarant shall be responsible for the review, approval, and monitoring of construction of improvements. Thus, for the purposes of this Declaration, wherever the Committee is described, regulated or permitted to act hereunder, such provisions shall apply to the Declarant, who will be acting in place of and as the Committee, when such provisions are used in connection with the Initial Construction of Improvements. The right of the Declarant to review and approve new plans pursuant to this section shall cease during times when the Declarant does not own any of the property comprising any portion of the Townhouses East Neighborhood, or January 1, 2010, whichever event shall first occur.

(ii) As to construction not comprising the Initial Construction of improvements, the Committee shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and

addresses of the persons who form the Committee and a list of the names and addresses of any designated representatives of the Committee, and such a list shall be available in the principal office of the Association to any Owner upon request.

b) Procedure. At least forty-five (45) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the complete Plans and all other required information, the Committee shall notify the Owner of the Lot or Improved Lot in writing as to whether the Plans have been approved. Unless a response is given by the Committee within thirty (30) days, the Plans shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot or Improved Lot, and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity with the approved Plan. The Committee shall have the right to monitor construction of improvements and investigate compliance with the approved Plans, and hereby reserves the right to enter upon any Lot or Improved Lot in order to do so.

Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging Common Properties, Limited Common Properties, improvements or infrastructure of The Villages of Tryon Community, and the Owner(s) who engaged the services of such contractor, shall be jointly and severally liable for such damage. The Committee may from time to time, in its sole discretion, require of any contractor or Owner a case or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements on the Townhouses East Neighborhood.

Any Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman of the Committee the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner or his agent, and the Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by simple majority vote of the Board, but must do so within 45 days of its receipt of the Committee's decision. Notwithstanding the foregoing, decisions regarding the Initial Construction of Improvements pursuant to Section 5.3 (a)(i) shall not be appealable to the Board.

The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner of the Lot or Improved Lot as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Improved Lot and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express), and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. If the Committee approves the Plans, one set of Plans, denoted as approved (or approved with specified conditions), shall be retained by the Committee, and the other two sets shall be returned to the applicant.

Construction must be completed in strict accordance with the Plans approved by the Committee. In addition, Dwelling Units shall comply with all applicable building, plumbing, electrical and other codes.

c) Application of this Article.

(i) This Article Five shall apply to any additions to the Existing Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

(ii) Notwithstanding anything contained within this Article Five or any other provision of this Declaration or the Master Declaration apparently to the contrary, no building, construction, reconstruction or repair of a Dwelling Unit, roadway, curbing, sidewalk, utility service, fence, improvements on Limited Common Areas or any other structure on a Lot made or caused to be made by the Declarant or Builder in accordance with plans previously approved pursuant to Section 5.3(a) shall require the re-approval of or be subject to the re-review of the Committee. As to the Townhouses East Neighborhood, this provision replaces any provision of the Master Declaration apparently to the contrary.

(iii) Repainting, reroofing, minor repairs, and the like shall not require the approval of the Committee if done or made in accordance with construction and design guidelines promulgated or adopted by the Committee or the Association.

(iv) The Association described in this Section 5.3 of this Declaration shall exercise all rights and obligations described herein, and Section 5.3 of the Master Declaration, granting the Master Committee similar rights and obligations to those granted to the Committee hereunder, shall not apply to the Townhouses East Neighborhood.

(v) No amendment to this Declaration changing the provisions of this Article Five shall be effective during the Class II membership and two years thereafter without the consent of the Declarant or approval of 67% of the Members.

ARTICLE SIX: RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS

Section 6.1 Signs. No signs of any type shall be displayed to public view on any Lot or the Limited Common Area without prior approval of the Board, except customary name and address signs and "For Sale" signs of not more than twelve (12) inches by twelve (12) inches and no more than one of each sign type may be posted. As to the Townhouses East Neighborhood, this provision replaces any provision of the Master Declaration to the contrary.

Section 6.2 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables if such a program is in place in the City of Raleigh), and all garbage receptacles, tools and equipment for use on a Lot or Improved Lot, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Improved Lot.

Section 6.3 Antennas. Any television antennas, radio receiver, or sender antenna or other similar device attached to or installed on the exterior portion of any Dwelling Unit or structure, or placed on any Lot or Improved Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the Committee).

Section 6.4 Unightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions to exist on his Lot or Improved Lot that shall tend to decrease the beauty of the Townhouses East Neighborhood, specifically or as a whole.

During the construction of any improvement to a Lot or Improved Lot in the Townhouses East Neighborhood, the Lot or Improved Lot, roads, bike paths, landscaping and Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot, Improved Lot or adjoining areas, as specified herein, or allow damage

to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot, Improved Lot or adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot or Improved Lot until paid. In compliance with The North Carolina Planned Community Act, North Carolina General Statute 47-E, the Declarant and/or Association may assess appropriate fines (with sufficient notice to the Owner) against any Owner who fails to make repairs as heretofore described.

Section 6.5 Vegetation. No existing vegetation shall be disturbed during construction without the express written consent of the Committee. The Committee shall require written proposals for the destabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Committee prior to the Owner applying for an occupancy permit from the City of Raleigh. This shall not prevent or limit in any way the Declarant from engaging in such earthmoving, clearing, moving, and pruning activities as are necessary to effect the overall plan of development,

Section 6.6 Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Absent an extraordinary showing of need by the Owner of a Lot or Improved Lot, no fence may be constructed any closer to the front of the Lot or Improved Lot than the front corner of the Dwelling Unit thereon. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or Improved Lot and does not unreasonably impede the view of any water course or other attractive feature from any other Lot or Improved Lot.

Notwithstanding anything herein to the contrary, temporary fences used in connection with model homes and soil erosion silt fences may be permitted by the Association or the Declarant.

Section 6.7 Driveways. All driveways, guest parking and turnabouts will be of non-porous materials; and special materials, surface treatments and/or accents may be required by the Committee.

Section 6.8 Timely completion. When construction of any Dwelling Unit, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Dwelling Units under construction in the Townhouses East Neighborhood be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred eighty (180) days of starting construction and that all phases of work, including execution of the Landscape Plan, be complete within one year of Committee approval. In the event that completion should be delayed beyond one year from Committee approval, then in that event, the Committee, may, so long as the Owner is notified within thirty days of the one-year period expiring, by way of unanimous vote of the Committee, rescind the existing approval and require that the Owner reapply and seek new approval. As with other Sections hereof, the Association may adopt a schedule of fines and enforce the same in connection with any Owner's failure to act in accordance with this Section.

Section 6.9 Party Walls and Other Shared Structures.

a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on a Lot or Improved Lot, which serves and/or separates any two adjoining Lots or Improved Lots shall constitute a "Party Structure." To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls, lateral support on below-ground construction, and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

b) Maintenance: Damage and Destruction. The cost of reasonable repair and maintenance of a Party Structure shall be shared equally by the Owners who make use of the Party Structure.

If a Party Structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the

structure may restore it. If other Owners thereafter use the Party Structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

c) Construction of a Party Wall. The Owner of any Lot or Improved Lot may construct, reconstruct, or extend in any direction on its Lot or Improved Lot (subject to and within the limitation of architectural control and other limitations of this Declaration) with the right to go upon the adjoining Lot or Improved Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot or Improved Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

d) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the Party Structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

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

g) Arbitration. In the event of any dispute arising concerning a Party Structure or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and a decision regarding the dispute shall be made by a majority of all the arbitrators and according to the laws of North Carolina relating to arbitration as then existing.

Section 6.10 Lawn Maintenance of Front and Side Yards. Until such time as sixty-seven percent (67%) of the Members vote to curtail such services, the Association shall be responsible for mowing and trimming the lawn area of Improved Lots, and, in the discretion of the Association, the entirety of (unimproved) Lots. For the purposes of this Section, front yards shall consist of those portions of Improved Lots extending from the front corners of townhouse improvements on the Improved Lots to the front street rights-of-way. Side yards shall consist of those portions of the unimproved parts of Improved Lots extending from the front corners of the townhouse improvements to either: (i) the rear corners of the townhouse improvements, or (ii) the fence, if any, on the Improved Lot, whichever is the shorter portion. In no event shall the Association, or its agents, be entitled or required to mow or trim portions of a lawn located behind a fence on an Improved Lot.

The Declarant hereby reserves, and Owners implicitly grant by their acceptance of a deed to property in the Townhouses East Neighborhood, an easement across each Lot and Improved Lot, in favor of the Declarant, the Association, and the Association's employees, contractors and agents, and the successors and assigns of the foregoing, in order to facilitate lawn maintenance as described in this Section.

The expenses of the Association under this Section shall be a Common Expense, borne equally by all Members in the Townhouses East Neighborhood.

Section 6.11 Application of the Article. Notwithstanding anything contained within this Article Six or any other provision of this Declaration or the Master Declaration, Section 6.1 through 6.8, shall not apply to a Builder; provided however that any act done by Builder that deviates from the provisions of this Article Six or the Master Declaration, Section 6.2 through 6.8, must first be approved in writing by the Declarant. As to the Townhouses East Neighborhood, this provision replaces any provision of the Master Declaration to the contrary.

ARTICLE SEVEN: ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 7.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Article One, for the purpose of removing any portion of the Townhouses East Neighborhood which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots or Improved Lots then subject to the Declaration by more than 10 percent and does not create any zoning nonconformities. Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn, if not the Declarant, and the City Attorney, and, if required, the HUD, the FHA, or the VA.

Section 7.2 Declarant's Easement Over Limited Common Area, Lots and Improved Lots. There shall be and is hereby reserved to the Declarant and its agents, contractors and designees a nonexclusive easement within the Townhouses East Neighborhood over any Limited Common Area and that portion of Lots and Improved Lots within five (5) feet of any lot line for the purpose of making, constructing, installing, repairing and maintaining improvements to Limited Common Areas or utility systems serving the Townhouses East Neighborhood, including, but not limited to roads, trails, sidewalks, sanitary sewers, water lines, gas lines and/or cables, telecommunication cables, storm drains, grading for drainage and drainage swales, and the like. The easement shall automatically expire five (5) years from the date of recordation of this Declaration. As to the Townhouses East Neighborhood, this provision replaces any provision of the Master Declaration to the contrary.

Any damage caused by the Declarant or its agents or contractors to an Owner's improvements on his Lot, including but not limited to damage to buildings, structures, landscaping or vegetation, shall be repaired by the Declarant at its expense. Damage done to the Limited Common Areas shall be repaired, restoring the Limited Common Area to its original condition, to the extent such repair and restoration is reasonably practicable.

Section 7.3 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Wake County Registry. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise. As to the Lots and Limited Common Areas adjacent thereto owned or previously owned by a Builder, Declarant hereby assigns to Builder its rights and duties under Section 7.2 relating to those Lots owned or previously owned by Builder and Builder accepts the duties specified in Section 7.2 by accepting the rights under Section 7.2. As to the Townhouses East Neighborhood, this provision replaces any provision to the contrary in the Master Declaration.

Section 7.4 Right to Redesignate Certain Property. The Declarant, during Class II membership and until one year after it terminates, hereby reserves for itself and its successors and assigns the right to redesignate property types or boundary lines shown on a Recorded Plat by recording a new Recorded Plat showing such changes and executed by the Declarant or its successor or assigns and any Owners of property redesignated or for which the boundary line is thereby changed. Except as limited herein or by City Code, Owners may recombine, add or delete lots, and adjust lot lines and the total number of their lots, and such resulting lots will, without any consent of the Declarant or the Association, constitute "Lots" hereunder.

Section 7.5 Easement to Exercise Rights and Perform Duties. The Declarant hereby reserves for itself, during Class II membership and two years thereafter, and for the Association otherwise, an easement across the entirety of the Townhouses East Neighborhood for the purpose of fulfilling its obligations, and those of the Association, and exercising its rights, and those of the Association, under this Declaration.

ARTICLE EIGHT: MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION; RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 8.1 Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot or Improved Lot in the Townhouses East Neighborhood is subject by this and any other Supplemental Declarations made in connection herewith to all rights, responsibilities and assessments of the Association and shall be a Member of the Association, provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 8.2 Voting Rights. The Association shall have two (2) classes of voting memberships:

- a) Class I. The Class I Members shall be all Owners of Lots or Improved Lots within the Townhouses East Neighborhood, other than the Declarant as long as Class II membership exists. Any Class I Member in the Townhouses North Neighborhood shall be entitled to one (1) vote for each Lot or Improved Lot which it owns. In the case of multiple ownership of any Lot or Improved Lot, however, those multiple Owners shall be treated collectively as one Owner.
- b) Class II. The Class II Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot or Improved Lot owned by it within the Townhouses East Neighborhood. The Class II membership shall cease and be converted to Class I membership on the happening of the first to occur of the following events:
 - i. Declarant has sold and closed the sale of 67% of all Lots and Improved Lots within the Townhouses East Neighborhood, or
 - ii. January 1, 2010.

If the Class II membership has been terminated or has expired and subsequently additional properties owned by the Declarant become subject to this Declaration pursuant to Section 1.2 prior to the date stated in subsection (ii) above, the Class II membership shall immediately be reinstated as of the date such additional properties become subject to this Declaration and shall not terminate except in accordance with subsection (i) and (ii) above. Following the termination of Class II membership, the Declaration shall become a Class I member.

Section 8.3 Voting: Proxies.

(a) If only one of the multiple Owners of a Lot or Improved Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot or Improved Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot or Improved Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot or Improved Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot or Improved Lot.

(b) Votes allocated to a Lot or Improved Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot or Improved Lot is owned by more than one person, each Owner of the Lot or Improved Lot may vote or register protest to the casting of votes by the other Owners of the Lot or Improved Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

- (c) No votes allocated to a Lot or Improved Lot owned by the Association may be cast.

Section 8.4 Rights and Responsibilities of the Association. Subject to the provisions set forth in this Declaration, the Association has exclusive management and control of the Limited Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto.

The Association's duties with respect to such Limited Common Properties include, but are not limited to, the following:

- a) maintenance of the Limited Common Properties, including private streets;
- b) management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Limited Common Properties or located upon the Limited Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- c) all landscaping of the Limited Common Properties;
- d) maintenance of adequate public liability insurance in an amount not less than \$1,000,000.00 per occurrence, insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of eighty percent (80%) after application of any deductibles, for the benefit of the Association with respect to the Limited Common Properties, all of the foregoing insurance policies being maintained and insurance proceeds being used in compliance with the provisions of North Carolina General Statutes Section 47F-3 -113;
- e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Limited Common Properties owned in fee;
- (f) lawn maintenance of Lots and Improved Lots as described in Section 6. 10 hereof; and
- g) exterior maintenance as described in Article Eleven.

The Association may in its discretion also provide other services as and to the extent the Association deems appropriate, such as, but not limited to, security services or devices, including but not limited to operation of the entry guard house and any other security gates, security personnel and overall traffic control.

The Association may obtain and pay for the services of any person or firm to manage its affairs to the extent the Board deems advisable, as well as such other person or firm as the Board determines is necessary or desirable, whether such person or firm is furnished or employed directly by the Association or by any person with whom it contracts. Any management contracts executed by the Association during the period of Class II membership shall have a 90 day termination clause. Without limitation, the Board may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Limited Common Properties or the enforcement of this Declaration, the Association's Articles of Incorporation, Bylaws, rules or regulations.

The Association may acquire, hold, exchange, and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Association's Articles of Incorporation or the Bylaws and the Raleigh City Code.

The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing use and operation of the Limited Common Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Townhouses East Neighborhood.

The Association may, acting through its Board, contract with other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Association and its Members. In addition, the Association may contract with other residential associations or commercial entities, neighborhoods or clubs within The Villages of Tryon Community to provide services in or perform services on behalf of such other associations, neighborhoods or clubs.

ARTICLE NINE: PROPERTY RIGHTS IN THE LIMITED COMMON PROPERTIES

Section 9.1 Members' Easements of Enjoyment. Subject to the provisions of Section 9.3 and Section 9.4, every Member shall have a right and easement of enjoyment in and to all of the Limited Common Properties and the Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot and Improved Lot in the Townhouses East Neighborhood.

Section 9.2 Delegation of Use. Subject to the provisions of Section 9.3 and Section 9.4, any Owner may delegate its rights of enjoyment of the Limited Common Properties and the Facilities to the members of its family, its tenants, contract purchasers who reside on the property, or its guests.

Section 9.3 Title to Limited Common Properties. The Declarant shall convey, and upon such conveyance the Association shall accept, legal title to any Limited Common Properties shown on any Recorded Plat of The Properties, and such title to a Limited Common Property shall be conveyed by the Declarant and accepted by the Association no later than the time of the conveyance of the last Lot within the applicable phase of the Townhouses East Neighborhood. The conveyance shall be in fee simple without any encumbrances except drainage, greenway and utility easements and easements reserved hereunder or on Recorded Plats. Title in the Limited Common Properties, and private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited. Upon conveyance of the Limited Common Properties by the Declarant to the Association, the Association shall not subsequently subdivide or convey the Limited Common Properties, except as follows:

a) The Association may mortgage the Limited Common Properties with the consent of at least 2/3 of each class of Members, and 4/5 of all Members, who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meeting. In the event the Association votes to mortgage all or any part of the Limited Common Properties, the rights of the mortgagee must be subordinated to the rights of the Owners and the Association.

b) In the event the Association is dissolved, the Limited Common Properties shall first be offered to the City of Raleigh, and if accepted, deeded to the City of Raleigh in fee simple. If the City of Raleigh refuses such property, then it shall be offered to another nonprofit organization that shall agree to maintain it.

c) The Association may exchange Limited Common Properties for other properties when all of the following are met:

- (i) written notice of the exchange is given to all Members except in cases where the exchange is done to eliminate an encroachment,
- (ii) After notice is given, if required, the Association approves the exchange,
- (iii) the exchanged properties and other considerations are of like value and utility,
- (iv) the acreage and configuration of the remaining open space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Raleigh City code and
- (v) the exchange is approved by the Planning Director of the City of Raleigh.

Conveyance of Limited Common Areas to the Association shall be made subject to the right of the Declarant to construct common improvements or complete construction thereof, as applicable, on the Limited Common Areas.

The right of Declarant to construct or complete construction of such improvements shall terminate three years after the termination of Class II membership.

Section 9.4 Extent of Members' Easements. The rights of Members of the Association shall in no way be altered or restricted because of the location of Limited Common Properties in any additions to the Townhouses East Neighborhood in which such Member is not a resident. The use of limited Common Properties belonging to the Association shall be a membership entitlement. The rights and easements of enjoyment created herein shall be subject, however, to the following:

- a) the right of the Declarant, in its sole discretion, to grade, pave or otherwise improve any road or street shown on any Recorded Plat;
- b) the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Limited Common Properties, and to limit the number of guests, to regulate hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Facilities or Recreational Facilities or the peace and tranquility of adjoining residents;
- c) the right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of any published rules and regulations adopted by the Board;
- d) subject to the Raleigh City Code, the right of the Association or its assignee to charge reasonable admission and other fees for use of any of the Association's Recreational Facilities situated upon its Limited Common Properties; and
- e) the right of the Association to dedicate or transfer all or any part of the Limited Common Properties (which includes streets and roads) or private water/sewer lines to any public agency, authority or utility (public or private) for such purposes and subject to such conditions as may be agreed to by the Members. Except as provided below, no such dedication or transfer shall be effective unless the Declarant (during Class II membership) and the Members entitled to at least sixty-seven percent (67%) of the Class I votes, and eighty percent (80%) of all votes, agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that, notwithstanding the foregoing, the Declarant (during Class II membership, and thereafter the Association shall each have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, water, gas and sewer upon, over, under and across any Limited Common Area, without the assent of the Members when, in the sole opinion of the Declarant or the Board, as applicable, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Townhouses East Neighborhood and, in the sole opinion of the Declarant or said Board, as applicable, will not unreasonably interfere with the overall use and enjoyment of the Limited Common Areas.
- f) Any greenway or park deeded to the City of Raleigh shall be made accessible to the general public.

Section 9.5 INTENTIONALLY OMITTED

Section 9.6 Private Roads. In the development of the Townhouses East Neighborhood, the Declarant may construct certain private streets or roads within the Townhouses East Neighborhood connecting parcels of the Townhouses East Neighborhood to public rights of way. The Owners of those Lots and Improved Lots bordering such private roads shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads, and, except as set forth in Section 1.3, there shall be no public rights of any kind therein, unless approved by the Members accordance with the provisions of Section 9.3 or 9.4. Subject to the approval of the Raleigh Planning

Department, the Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police, or other public service to the Townhouses East Neighborhood or the Owners, their guests or tenants when such failure is due to a lack of access to such areas due to inadequate design or construction, blocking of access routes inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the owners. In no case shall the City of Raleigh or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be inspected by the City to ensure that they were constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Association shall also be responsible for any curbs, gutters, storm drains and the like associated with the private streets.

Section 9.7 Greenway. Notwithstanding any other provisions of this Declaration, the Association, Owners, Members, tenants of Members, guests or invitees of Members, or families of Members shall not, within any portion of the Limited Common Area which is greenway area dedicated to the City of Raleigh (and is so designated on a Recorded Plat), without the Prior written consent of the City of Raleigh (site plan approval and the issuance of grading permits, for instance, deemed hereunder to be written consent to the development of such areas):

- a) Grant easements of any nature whatsoever;
- b) Remove any trees or vegetation;
- c) Erect gates, fences or other structures;
- d) place any garbage receptacles;
- e) Fill or excavate;
- f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail Markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City of Raleigh and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE TEN: COVENANT FOR PAYMENT OF ASSESSMENTS

Section 10.1 Creation of the Lien and Personal Obligation for Assessments. Each Member, other than the Declarant, who is the owner of any Lot or Improved Lot, by acceptance of a deed there for, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay as limited below, to the Association:

- a) annual assessments or charges as herein or in the Bylaws provided,
- b) special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- c) Special Individual Assessments, as defined and described in Section 10.5.
- d) working capital assessments of fifty Dollars (\$50.00), due and payable by the grantee at the time such Lot or Improved Lot is conveyed by the Declarant, and due and payable again by the grantee's grantee of the Lot or Improved Lot if the grantee of the Declarant is a Builder.

The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as Herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Improved Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who Is (are) the Owner(s) of such properties at the time when the Assessment fell due.- Payment of the working capital assessment shall not reduce the annual assessment.

Section 10.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Townhouses East Neighborhood and other Members, and in particular for:

- a) improvement, maintenance, and replacement of any of the Association's Limited Common Properties including, without limitation, private streets, and Facilities and Recreational Facilities located on Limited Common Properties;
- b) payment of the Common Expenses;
- c) implementation and enforcement of proper maintenance of exteriors of Dwelling Units and related improvements on Improved Lots in the Townhouses East Neighborhood, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Sections 11.1 and 11.2 of this Declaration;
- d) establishment of capital replacement reserves; and
- e) acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Limited Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management supervision, the payment of taxes assessed against those Limited Common Properties the procurement and maintenance of insurance related to those Limited Common Properties, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 10.3 Assessments of Uniform Rates Within Different Categories or Forms of Ownership. Except as described in Sections 10.12 and 10.13 hereof, both annual and special assessments shall Be fixed at uniform rates for every Lot or Improved Lot within the Townhouses East Neighborhood. There will be no difference between assessments as to Lots, or between assessments as to Improved Lots.

Section 10.4 Special Assessments for Capital Improvements.

a) In addition to the regular annual Assessments, the Association may levy in any assessment year, a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, any lake, waterway, or pond) located upon the Association's Limited Common Properties, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws and Section 4.2 hereof for such special meetings.

b) In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives a threat to persons or property, without the consent of the Members. The amount of such Assessment, however, may not exceed \$300.00 per Owner.

Section 10.5 Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Improved Lot rather than on all Lots or Improved Lots or types of Lots or Improved Lots in the Townhouses East Neighborhood special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained herein or in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, or the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws, all of the foregoing of which shall comprise "Special Individual Assessments." Any assessments, fines, damages, costs, fees and/or expenses shall be in compliance with North Carolina General Statute 47-E, The North Carolina Planned Community Act.

Section 10.6 Quorum for any Action Under Sections 10.4 and 10.14. The quorum required for any action authorized by Sections 10.4 and 10.14 hereof shall be as follows:

At the first meeting called as provided in Section 10.4 or Section 10.14, the presence at the meeting of Members, or of proxies, entitled to cast ten percent (10%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Section 10.4 or Section 10.14, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

Section 10.7 Date of Commencement of Annual Assessment: Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in quarterly, semiannual, or annual installments. The payment of the regular annual Assessment by Owners shall commence as to each Lot and Improved Lot on the first day of the month following the conveyance of that property by the Declarant. The first regular annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment at least fifteen (15) days in advance of each regular annual Assessment period. Written notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific Assessment has been paid. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance.

The first Assessments levied against any additions to the Townhouses East Neighborhood not now subject to Assessment, at a time other than the beginning of any Assessment period, shall be an amount which bears the same relationship to the regular annual Assessment as the remaining number of months in that year bear to twelve.

The due date of any special Assessment under Section 10.4 or any other Assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such Assessment.

Section 10.8 Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, and the amount of the Assessment or assessments against each Member, for each Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and

Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member.

Within 30 days after adoption of any proposed budget for the Community, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be ratified at the meeting unless at that meeting a majority of the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. Nothing in this paragraph alters the special requirements under Section 10.14 hereof in the event a budget is proposed that would increase annual Assessments by more than 10% over the previous year's amount.

Assessments to pay a judgment against the Association may be made only against the Lots or Improved Lots in the Community at the time the judgment was entered, in proportion to their Common Expense liabilities. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Section 10.9 Effect of Non-Payment of an Owner's Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association. If the Assessments of an Owner are not paid within thirty (30) days following the date due (being the dates referred to in Section 10.7), then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot(s) or Improved Lot(s), which shall bind the Owners of such Lot(s) or Improved Lot(s), and the heirs, devisees, personal representatives, successors and assigns of the Owners thereof. The personal obligation of the then Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Lot or Improved Lot) unless expressly waived by the Board.

If the Assessment(s) is not paid within thirty (30) days after the delinquency date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Lot(s) or Improved Lot(s), in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and there shall be added to the amount of such Assessment the costs of such action and reasonable attorney fees or other cost incurred by the officers of the Association pursuant to authority of the Board. A claim of lien shall specify the name and address of the Association, the name of the record owner of the Lot or Improved Lot, at the time the claim of lien is filed, a description of the Lot or Improved Lot and the amount of the lien claimed. In the event a judgment is obtained against any owner for such Assessments such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the delinquency date, which late fees shall be in addition to the other changes described herein.

Section 10.10. Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust. The lien on an Owner's property of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot(s) or improved Lot(s). The subordination shall not relieve any Lot(s) or improved Lot(s) from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Lot or improved Lot shall not affect any lien for Assessments. However, the sale or transfer of a Lot or Improved Lot that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectible as a Common Expense from all Owners in the Community. No such sale or transfer shall relieve a Lot or Improved Lot from liability for any assessments thereafter becoming due, or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

Section 10.11 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- a) all Common Properties as defined in Article Three of the Master Declaration;
- b) all Limited Common Properties as defined in Article Three of this Declaration; and
- c) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. (Homestead exemptions shall not be considered an exemption.)

Notwithstanding any provisions of this Section 10.11, no Lot or Improved Lot shall be exempt from said Assessments, charges or liens.

Section 10.12 Declarant's Obligations for Assessments. As long as and whenever the Declarant owns 16% or more of the Lots and Improved Lots in the Townhouses East Neighborhood for which no certificate of occupancy has been issued by the City Of Raleigh, the Declarant's obligation for Assessments on unsold Lots or Improved Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association and the Assessments levied on the existing Members other than the Declarant. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than the Builder Rate (defined below) on unsold Lot(s) or Dwelling Unit(s) owned by Declarant. Whenever the Declarant owns less than 16% of the Lots and Improved Lots in the Townhouses East Neighborhood, Declarant shall pay Assessments at the Builder Rate for each Lot or improved Lot owned by the Declarant for which no certificate of occupancy has been issued by the City of Raleigh, and the Declarant shall not have any obligation to make a deficiency contribution.

Section 10.13 Builders' Obligations for Assessments. Notwithstanding anything to the contrary in Section 10.3 or Section 10.7, the annual Assessments on Lots or Improved Lots owned by Builders shall accrue annually at a rate equal to fifty percent (50%) of the rate applicable to Owners other than the Declarant (such discounted rate herein called the "Builder Rate"). Three months after the date of the issuance of a certificate of occupancy for an Improved Lot assessed at the Builder Rate, the Assessments for such Improved lot shall begin accruing at the rate applicable to other Owners (other than the Declarant), and the Builder Rate shall no longer apply to such improved Lot. Also, once any Recreational Facilities described in Article Twelve have been completed and are in operation, the Declarant (while Class II membership exists, or the Association otherwise) may terminate the Builder Rate, in which case the annual Assessments levied on all Builders shall be made at the rate applicable to other Owners (other than the Declarant) rather than at the Builder Rate.

Section 10.14 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Improved Lot from the Declarant, the maximum annual Assessment shall be Four Hundred Eighty and No/1 00 Dollars (\$480.00) per Lot or Improved Lot, as applicable. From and after January 1 of the year immediately following the conveyance of the first Lot or Improved Lot from the Declarant, the annual Assessment each year shall be no more than 10% of the previous years' Assessment, unless two-thirds or more of each class of the Members present or voting by proxy at a duly called meeting (written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws and Section 4.2 hereof for such special meeting, vote to increase the annual Assessments for a given year by more than 10% more than the annual Assessments for the prior year, The Board may fix the annual Assessments at any amount not greater than the maximum described here or determined by the duly called meeting as described above. The limitations in the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to (1) a merger or consolidation in which the Association is authorized by law to participate, (2) as an incident to any additions to the Townhouses East Neighborhood or submission of additional property pursuant to Section 1.2(b) of this Declaration, or (3) in connection with the addition of Recreational Facilities for the Townhouses East Neighborhood pursuant to Article Twelve hereof.

Section 10.15 Townhouses East Neighborhood Assessments Separate from Master Assessments. Owners are hereby reminded that Assessments described hereunder are different from and in addition to any and all assessments established in the Master Declaration, and the levying and payment of Assessments pursuant to this Declaration does not diminish, replace, or alter the levying and payment of assessments by and to the Master Association as described in

the Master Declaration. The Association described in this Declaration and the Master Association described in the Master Declaration are two separate entities, and Owners of property in the Townhouses East Neighborhood will be Members of both such associations by virtue of their ownership of property in The Villages of Tryon Community generally and in the Townhouses East Neighborhood specifically.

Section 10.16 Application of Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses (including expenses for special Assessments described in Section 10.4 hereof), the funding of a reasonable operating expense surplus, and any payment of reserves, shall be paid to the existing Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense Assessments, the election of which application of the funds shall be made by the Board.

ARTICLE ELEVEN: OWNER MAINTENANCE RESPONSIBILITIES

Section 11.1 Maintenance Responsibilities. In addition to maintenance of the Common Area surrounding the attached dwelling units, the Association shall provide exterior maintenance for each Lot which is subject to assessment to the Class A Membership as "Limited Common Expenses" for such maintenance of "Limited Common Property" hereunder as follows: Paint, repair and replace exterior building surfaces, care of roofs, gutters, downspouts, mailboxes, trees, shrubs, grass, walks, driveways within the Common Area only, and all other exterior improvements initially installed by Declarant. Such exterior maintenance shall not include windows, glass surfaces of any kind, window screens, exterior lighting attached to or wired to the townhome, doors (including garage doors) of any nature and wherever located, decks or stairs. In order to enable the Association to accomplish the foregoing, it is hereby reserved to the Association the right to unobstructed access over and upon each Lot and each townhome at all reasonable times to perform maintenance as provided in this Article. The Owner may, at his election, plant flowers and grass in any portion of his yard not maintained by the Association, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the townhome and the remaining yard spaces. In such event, such Owner shall maintain such plantings or other maintenance. No such maintenance by an Owner shall reduce the assessment payable by him to the Association. Notwithstanding the above, any plantings or maintenance outside the patio or deck area must receive the prior written approval of the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard in a neat and orderly manner, the Association may perform such maintenance and assess Owner for the costs of such. The Owner shall not place any furniture, construct or place any structure, or plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information for future Class A members of this Subdivision Association, the developer wishes to make it known that it is a part of the original plan of the development to construct a variety of townhomes with a variety of exteriors for the good of the entire subdivision. Some townhomes will require far more maintenance than others because of the type of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those persons connected with the conception, design, construction, and financing of this subdivision as originally planned are in accord in their belief that all Class A Members of the Association will be benefited by the variety of exteriors and therefore the Association should provide exterior maintenance and make a uniform rate of charge without regard to actual cost of maintenance of each townhome under construction thereon.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Class A Owner, his family guests, tenants or employees or invitees or is caused by a fire, lightning thunderstorm, hail, explosion, riot, attending a strike, civil commotion, aircrafts, vehicles and smoke as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance policy, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Class A Lot is subject.

The Association shall establish regulations governing the procedure for exterior maintenance. In the event any establish regulations governing the procedure for exterior maintenance. In the event any Owner desires to expend a sum greater than that sum authorized by the Association, he shall advance, prior to the commencement of work, an amount necessary to cover the additional expenses and a lien shall be established against his Lot for any deficiency.

Section 11.2 Maintenance of Dwelling Units. Each Owner of an Improved Lot within the Townhouses East Neighborhood, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

- a) to maintain an adequate level of hazard insurance on its Dwelling Unit;

- b) to build or restore the Dwelling Unit thereon in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Dwelling Unit; and
- c) to keep the Dwelling Unit in good repair as required by this Declaration or by the Bylaws.

ARTICLE TWELVE: RECREATIONAL FACILITIES

The Declarant may (but shall not be obligated to) construct recreational amenities, including without limitation tennis court(s), pool(s), clubhouse(s) serving the pool or tennis court, walking trails or bike paths, in any areas shown as "Limited Common Area," "Present Townhouses East Neighborhood Recreational Facilities" or "Other Townhouses East Neighborhood Residential Facilities" on any Recorded Plat or in any areas deeded or to be deeded to the Association for recreational Limited Common Areas (the areas so designated and the improvements erected thereon referred to herein as the "Recreational Facilities"). Any such Recreational Facilities shall comply with all requirements of the Raleigh City Code and shall be provided for the benefit of all Owners of Lots or Improved Lots, their tenants and guests within the Existing Property. The Recreational Facilities shall be maintained as part of the Limited Common Properties out of assessments imposed on all Owners who have the right of access to and the use of the Recreational Facilities in accordance with the provisions of Article Nine. The Board shall have the right to form an affiliated association (the "Operator") which may be a separate corporation or a division of the Association and assign to it the responsibilities of maintenance and operation of the Recreational Facilities on a non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Board may deem reasonably necessary. The Operator shall maintain and operate such portions of all Recreational Facilities as are designated to be maintained and operated by such Operator for the benefit of every Owner in good standing with the Association. The Association (by action of its Board) may require that all Assessments hereunder be current in order for any Owner to enjoy the use of the Recreational Facilities. Other than the aforementioned right to use such Recreational Facilities as a tenant or guest of an Owner, non resident memberships or fees paid by the general public shall not be permitted. The Operator may impose reasonable regulations regarding the use of any such Recreational Facilities to insure accessibility, safety, harmony and preservation of any such Recreational Facilities. The Association reserves the right to revoke an assignment made by it to an Operator and to assume the operation of any such Recreational Facilities, on a membership basis, and to impose special fees, charges or assessments against the Owners with respect thereto. The cost of the management operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed Common Expenses as to all Owners. For a period of one year after Class II membership has last terminated, the Declarant may increase assessments by up to an additional \$5.00 to help fund the management, operation, maintenance, repair, servicing, replacement, and renewal of Recreational Facilities not previously included in the Assessments budget.

ARTICLE THIRTEEN: AMENDMENT TO DECLARATION

Section 13.1 Owner/Member Initiated. An amendment to this Declaration may be proposed upon a majority vote of the Owners, with only one Owner per Lot or Dwelling Unit voting, whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than sixty (60) days from date of notice. It shall be required that each Owner be given written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than sixty (60) days before the date set for such special meeting. Such notices shall be made in compliance with the provisions of Section 4.2 hereof, and after made in compliance therewith, shall be deemed to be properly given. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) or more of the votes of each class of Member entitled to vote in order for such amendment to become votes being calculated as provided in Section 8.2). At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and

counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of the Association on a form, stating that the amendment was duly adopted and approved by the requisite percentage of Owners. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Wake County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

Without the prior written consent of the Declarant, when Declarant is a Class II Member, there shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of five years from the effective date hereof, and in addition, no Owner/Member-initiated amendments may be made for any reason to Sections 6.4, 6.8 or 10.12. The above limitations shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 13.2 below.

Section 13.2 Declarant's Right to Unilaterally Amend. Declarant, or its successor or assigns, shall be allowed to unilaterally make any amendments to this Declaration necessary, in the Declarant's opinion: for compliance with laws or regulations relating to FHA, HUD, VA, the Federal National Mortgage Association or the Office of Interstate Land Sales; necessary to establish the nonprofit qualifications of the Association; to correct any discovered typographical error contained herein; to clarify any ambiguity contained herein; to comply with governmental directives, to maintain the tax exempt status of the Association; or to add or delete any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of the Townhouses East Neighborhood and the Owners therein. This right may be exercised, and shall be effective only upon the recordation of a "Corrected Declaration" in the Office of the Register of Deeds of Wake County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

The Declarant may also amend this Declaration, upon receiving approval by the City Attorney, by filing an amendment in the Wake County Registry, executed by only the Declarant, if at the time of the recording of the amendment the Declarant is still the sole owner of property (excluding streets and rights-of-way) in the Townhouses East Neighborhood. Such amendment need not be certified by the Association.

Section 13.3 INTENTIONALLY OMITTED

Section 13.4 When Effective Recording: Title Searching. No amendment to this Declaration may occur without the prior consent of the City Attorney. An amendment to this Declaration that complies with the provisions of Section 13.1 or Section 13.2 shall be effective when approved by the City Attorney and recorded in the Wake County Registry. The amendment shall be indexed under the name of the Declarant or its successor, the Association or its successor, or the Owners of the property in the Townhouses East Neighborhood. The failure of the amendment to be indexed under all of the foregoing shall not invalidate such amendment so long as the amendment has been indexed under at least one of the foregoing. Anyone searching title on Lots or Improved Lots in the Townhouses East Neighborhood should search under the names of the foregoing to discover amendments to this Declaration that may have occurred after the Lot or Improved Lot has been conveyed to an Owner from the Declarant.

ARTICLE FOURTEEN: INTENTIONALLY OMITTED

ARTICLE FIFTEEN: INTENTIONALLY OMITTED

ARTICLE SIXTEEN: VA AND HUD APPROVAL

In the event that any Owner hereafter finances its Improved Lot through a loan guaranteed or insured by the VA, the FHA, or the HUD, or Lots or Improved Lots within the Townhouses East Neighborhood are approved by the VA, the FHA, or the HUD as being eligible for such loans, then, until all Class II Membership ceases to exist and be converted to Class I Membership as provided in Article Eight hereof, the approval of the VA, the FHA, or the

HUD shall be obtained prior to: (i) the annexation of additional property to the Townhouses East Neighborhood subject to this Declaration, (ii) dedication of additional Limited Common Properties other than Limited Common Areas or Limited Common Properties designated on existing plats of the Townhouses East Neighborhood, and (iii) amendment of this Declaration.

ARTICLE SEVENTEEN: CAPTIONS, INTRODUCTIONS AND GENDER

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so requires.

ARTICLE EIGHTEEN: SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be several each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

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

OWNER OF EXISTING PROPERTY:

WESTFIELD HOMES OF NORTH CAROLINA, INC.

a North Carolina corporation (SEAL)

By: [Signature] (SEAL)

ATTEST:

By: Paulette Bragg (SEAL)
Secretary

STATE OF North Carolina
Wake COUNTY

I, Pamela Lee Whorley, a Notary Public of Wake County, State of N.C., do hereby certify that Paulette Bragg, Secretary of Westfield Homes of North Carolina, Imnc., a North Carolina corporation, personally came before me this day and acknowledged the due execution of the foregoing instrument by John Schlichenmaier its President as his/ her act and deed and as the act and deed of the Corporation, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hands and notarial seal, this 27th day of March, 2000.



Pamela Lee Whorley
Notary Public
My Commission Expires: 9/8/2003