

Return to: MANNING, FULTON & SKINNER, Post Office Box 1150, Raleigh, NC, 27602

DECLARATION
OF COVENANTS,
OF
KILDAIRE FARMS PLANNED UNIT DEVELOPMENT

RECEIVED
FEBRUARY 15 1 55 PM '85
REGISTERED DEEDS
WAKE COUNTY, NC

THIS DECLARATION, made this 8 day of March, 1985, by THE HARLON GROUP OF NORTH CAROLINA, INC., hereinafter called "Declarant", a North Carolina corporation with a principal office in Raleigh, Wake County, North Carolina.

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and desires to create thereon an exclusive residential community to be known as Kildaire Farms Development with permanent parks, playgrounds, open spaces, streets, roads, walkways and other facilities for the benefit of the said enjoyment which may be shared and enjoyed by all residents of Kildaire Farms Development; and

WHEREAS, Kildaire Farms Development will be developed in stages or phases containing townhouses, condominiums, single family dwellings, and multi-family dwellings; and,

WHEREAS, the various developed phases also will be subject to associations of owners of these dwelling units; and,

WHEREAS, in order to provide a coordination and continuity among the various phased communities, the owners of dwelling units in those communities, and the associations having jurisdiction over those communities, it is deemed appropriate to have an association in which all Owners in Kildaire Farms Development are members; and

WHEREAS, Declarant desires to have areas of the Development owned by this Association for the benefit of all owners within the Development; and

WHEREAS, Declarant desires that some parks, playgrounds, open spaces, streets, roads, walkways and other facilities be owned and maintained exclusively for the benefit of each local community and be designated "COMMUNITY COMMON PROPERTIES" and that other such areas and facilities be owned and maintained for the benefit of the larger community and be designated "COMMON AREA"; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection and enhancement of the values and amenities in Kildaire Farms Development, and to insure the residents' enjoyment of the specific rights, privileges and easements in the Community Common Properties and Common Area and facilities, to create organizations to which should be delegated and assigned the powers of owning, maintaining and administering the Community Common Properties and Common Area and facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina, as a non-profit corporation, KF Homeowners Association II, Inc., for the purpose of exercising the functions aforesaid within the said larger community known as Kildaire Farms Development.

NOW THEREFORE, the Declarant declares that the real property described in Article II, and such other parcels as may be subjected hereto, as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration or amendment hereto (unless the context shall prohibit) shall have the following meanings:

(a) "Kildaire Farms Development" (or "Development") shall mean and refer to all properties described as tracts 1, 8 and 10 in that deed from Kildaire Farms Development Corporation to The Harlon Group of North Carolina dated and recorded January 6, 1984 in Book 3223, Page 143, Wake County Registry.

(b) "Corporation" shall mean and refer to KF Homeowners Association II, Inc., its successors and assigns.

(c) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments hereto as are recorded in the Office of the Register of Deeds, Wake County, North Carolina.

(d) "Properties" shall mean and refer to that certain real property described in this Declaration in Article II, Section 1, and such additions as may hereafter be subjected to this Declaration and brought within the jurisdiction of the Corporation.

(e) "Common Area" shall mean and refer singularly or collectively as applicable, to all land, improvements and other properties heretofore, or hereafter, owned by, or in the possession of, any association of owners of Properties, and the common areas and facilities subject to control and maintenance assessment by any condominium homeowners association of lands subject to this Declaration as amended from time to time, in both cases including specifically those areas so designated within properties that are hereafter subjected hereto. The term shall include any limited common area and facilities.

(f) "Community Common Properties" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by, or in the possession of, the Corporation.

(g) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family dwelling unit and shall include single family residences, condominium units, townhouses, villas, and any other single family dwelling unit located on the Properties, including attached or detached units.

(h) "Member" shall mean and refer to an "Owner" subject to assessments as provided in this Declaration.

(i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Living Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(j) "Declarant" shall mean and refer to The Harlon Group of North Carolina, Inc., a North Carolina corporation, its designated successors and assigns.

(k) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plat recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration as it may be amended, but shall not include any Lot specifically designated as being excluded on any recorded map, or any Common Area or Community Common Properties.

(l) "Access Area" shall mean and refer to the areas designated as such on the various maps of the Kildaire Farms Development.

(m) "General Plan of Development" shall mean and refer to the general plan on display in the sales pavilion and heretofore submitted to the Town of Cary.

ARTICLE II

Property subject to this declaration

ADDITIONS THERETO

Section 1. Existing Property. The real property which hereby is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described as shown on Exhibit A attached hereto and incorporated herein by reference.

Section 2. Additions Included Within. Additional lands within Kildaire Farms Development herein may be annexed by Declarant, without the consent of the members, within fifteen (15) years of the date of this instrument provided that the annexation is in accord with the general plan heretofore approved by the Town of Cary or the Federal Housing Authority and the V.A.

Section 3. Mergers. Upon a merger or consolidation of the Corporation with any other corporation, its properties, rights and obligations may be transferred to the surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may be added to the properties, rights and obligations of this Corporation, as a surviving corporation. The surviving or consolidated

corporation may administer the covenants and restrictions established by this Declaration within the Existing Property, together with any covenants and restrictions encumbering any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration as affecting the Properties except as hereinafter provided.

ARTICLE III

MEMBERSHIP

Section 1. Those Entitled to Membership. Membership in the Corporation shall be appurtenant to and may not be separated from ownership of any Lot, or Living Unit. Ownership of such Unit shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

Section 1. Class of Voting Membership. The Corporation shall have two classes of voting membership:

Class A. Class A member(s) shall be all Owners except Declarant. Class A members shall be entitled to one vote for each Lot or Living Unit owned by them. When more than one person owns any Lot, or Living Unit, all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as the majority of such persons among themselves determine. At any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such Lot or Living Unit, shall be conclusive, unless another of such persons contests such representation at such meeting prior to the casting of such vote.

Class B. The Class B member(s) shall be Declarant. The Class B member(s) shall be entitled to three (3) votes for each Lot and Living Unit owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, provided, however, that the Class B membership shall be

reinstated if thereafter, and before the time stated in sub-paragraph (b) below, additional lands are subjected hereto without the assent of Class A members pursuant to Article VII, Section 2, below, or

(b) on January 1, 2001.

Section 2. Membership Sub-Classes. The Board of Directors of the Corporation shall have authority to, and is hereby authorized to, at its discretion, create membership sub-classes of those who are Class A members and to designate and to delineate sub-membership areas within the Development. Each such sub-membership classification and area delineation shall consist of Owners of like or similar type dwelling units, such as Owners of all townhouses or a particular group of townhouses, or Owners of all condominium units or a particular group of condominium units.

Section 3. Purposes of Sub-Classes. Sub-classes of Class A membership may be designated by the Board of Directors for the purpose of establishing special assessment groups consisting solely of certain Owners to require such Owners of any such designated membership sub-classification to pay assessments which may differ from those required of other Owners based upon the obligation of the Corporation to provide different types or extents or services, or maintenance to such Owners.

ARTICLE V

PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTIES

Section 1. Owners' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area together with, and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Community Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot and Living Unit, subject to the following provisions:

(a) the right of the Corporation to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Community Common Properties;

(b) the right of the Corporation to suspend the voting

rights and right to use the recreational or other Community Common Properties facilities by an Owner for any period during which any assessment against his Lot or Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Corporation to dedicate, sell or transfer all or any part of the Community Common Properties to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members, and an instrument reflecting such approval has been recorded. On such instrument the Secretary of the Corporation shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale or transfer and such certificate shall be conclusive as to the matters set forth therein and binding upon all Owners, their successors and assigns. Anything above set forth notwithstanding, however, conveyances for utility purposes as specified herein may be made without consent of the members;

(d) the right of the Corporation to limit the number of guests of members;

(e) the right of the Corporation, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Community Common Properties and facilities, and in aid thereof to mortgage said property, and the rights of a mortgagee in said Properties shall be subordinate to the rights of the Members hereunder;

(f) the rights of the members to the use of parking spaces, as may be provided by the Board of Directors;

(g) the right of the Corporation in accordance with its Articles of Incorporation and By-Laws to impose rules and regulations providing for the use and enjoyment of the Community Common Properties, which rules and regulations may further restrict the use of the Community Common Properties.

(h) the rights of Owners of Lots, and Living Units located upon other lands made subject hereto, to the enjoyment and ingress, egress and access, to and over the Community Common Properties.

Section 2. Title to the Community Common Properties. Declarant hereby covenants for itself, its successors and assigns, as Properties are annexed, that it will convey fee simple title to the Community Common Properties within the annexed Properties to the Corporation, free and clear of all financial encumbrances and liens, prior to the conveyance of the first Lot to a third party but subject to utility, service, storm drainage and other similar service or utility easements. Declarant will also convey to Corporation those common areas that are parts of other portions of Kildaire Farms Development as those portions are subjected hereto until all common areas, as shown on the plans approved by the Town of Cary, have been conveyed to the Corporation.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations for Assessments. Declarant, hereby covenants, and each Owner of any Lot or Living Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant, and agree to pay to Corporation: (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, both as assessed by Corporation, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Community Common Properties and public roads if the Corporation shall default in payment thereof, all as hereinafter provided. The annual special assessments due with respect to each Lot or Living Unit, together with interest, and costs, and reasonable attorney's fees for collection, shall be a charge against and a continuing lien upon such Lot or Living Unit. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Living Unit at the time when the assessment was made.

Such personal obligation for the delinquent assessments shall not pass to successors in title to such Owners unless expressly assumed by them.

The Corporation shall also have the authority, through its Board of Directors, to establish, fix and levy a special assessment against any Lot, or Living Unit, to secure any obligation of the Owner thereof to the Corporation, arising from breach by such Owner of any of the provisions of this Declaration, which breach shall require the expenditure of time and money or both, by the Corporation for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay all assessments levied by the Corporation on his Lot or Living Unit with ten (10) days after delivery of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date of delivery of such invoice, the amount of such charges, together with interest at the legal rate until paid and all costs expended by Corporation in the collection thereof including reasonable attorneys fees, shall become a lien upon said Owner's parcel and shall continue to be a lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Community Common Properties and the Common Area the procurement and maintenance of insurance in accordance with the By-Laws, the employment of counsel, accountants and other professionals for the Corporation when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment shall be ONE HUNDRED TWENTY AND NO/100 - Dollars (\$ 20.00) per Lot or Living Unit.

(a) From and after January 1 of the year immediately

following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment may be increased without a vote of members, effective January 1 of each year, if such increase is not more than the greater of (1) 5% of the prior annual assessment or (2) an increase based solely upon the rise, if any, of the Consumer Price Index (or such index as may succeed it published by the Department of Labor, Washington, D.C.), for the preceding month of July as compared with that month a year earlier.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment may be increased above the that permitted under paragraph (a) above, by a vote of the members, provided that any such increases above such maximum shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the permitted maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Corporation 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 any construction, reconstruction, restoration, repair or replacement of a capital improvement located upon the Community Common Properties, or Common Area, or any extraordinary maintenance, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class

of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units, and may be collected on a monthly, or less frequent, basis. However, if a sub-classes of membership are created by the Board of Directors, as provided herein, such assessments shall be fixed and uniform rates for all Lots or Living Units within any sub-class. Assessments may differ between areas having different sub-classes of membership. Assessment with respect to a sub-class of membership shall be determined by the cost to the Corporation, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to such sub-class of memberships. Provided, however, that the assessment for Lots or Living Units owned by Declarant, which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Corporation, but shall not be less than twenty-five percent (25%) of the regular assessments for such Lots or Units.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots and Living Units on the first day of the month following the conveyance of the Community Common Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation, setting forth whether the assessments on a specified Lot or Living Unit have been paid. a property executed certificate of the

Corporation, as to the status of assessments on a Lot or Living Unit shall be binding upon the Corporation, as of the date of issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by North Carolina law. The Corporation may bring an action of law against the Owner personally obligated to pay the same, and/or foreclose the lien against the subject property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Common Properties or abandonment of his Lot or Living Unit.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot or Living Unit shall not affect any then existing lien or then due assessment. However, the sale or transfer of any Lot or Living Unit pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but not from liability for any assessments thereafter becoming due.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII

ADDITIONAL PROPERTIES

Section 1. Approval and Votes. Subjecting additional property to this Declaration, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in

advance of the meeting setting forth the purposes of the meeting. The presence of the members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the proceeding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Declarant's Authority. If within fifteen (15) years of the date hereof, the Declarant should desire to subject to this Declaration additional land within the boundaries shown on the general plan of Kildaire Farms Planned Unit Development heretofore submitted to the Town of Cary or the Federal Housing Administration (F.H.A.) and the Veterans Administration (V.A.), such land may be subjected to this Declaration by the Declarant without the consent of members provided that such action is in accord with the general plan heretofore approved by the Town of Cary or F.H.A. and V.A.; and in doing so, Declarant may file and record such amendments to this Declaration as are necessary, without the consent of any other members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Corporation.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Properties, the Community Common Properties and the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties, except the Common Areas and Community Properties (except for the temporary

office of the Declarant and/or model units used by Declarant and such construction materials, storage, equipment, signs and parking of Declarant) shall be used for other than residential purposes and for purposes incidental or accessory thereto.

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

Section 4. Animals No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept and maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

ARTICLE IX

EASEMENTS

Section 1. Utility Easements. All of the Properties, including Lots, Community Common Properties and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors or successors in title, prior to the subjecting of the Properties to this Declaration.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachment, settlement or shifting; providing however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Section 3. Unintentional Encroachments. In the event that any Lot or Living Unit shall encroach upon any Community Common Properties or Common Area, or upon any other Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner of the first described Lot

or Living Unit or agents or such Owner, then an easement appurtenant to such Lot or Living Unit shall exist for the continuance and maintenance of such encroachment upon the Community Common Properties or other Lot or Living Unit for so long as such encroachment shall exist; and, in the event that any portion of the Community Common Properties shall encroach upon any Lot or Living Unit, then as easement shall exist for the continuance and maintenance of such encroachment of the Community Common Properties onto any such Lot or Living Unit, for so long as such encroachment shall exist.

Section 4. Overhanging Roofs and Eaves. The owner of each Lot and Living Unit, is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and Living Unit and/or the Community Common Properties, as the case may be, for over-hanging roofs and eaves and the maintenance thereof.

Section 5. Easement for the Benefit of the Town of Cary. An easement is hereby established for the benefit of the Town of Cary, and such other governmental agencies to which the Town of Cary may assign its rights herein, over all Community Common Properties and Common Areas for the setting, removing and reading of water meters (which shall be separate for each Living Unit), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Properties.

Section 6. Property of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration, and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners of the Lots, Common Areas and the Community Common Properties, and other persons in whose favor such easements have been granted, as the case may be, superior to all other encumbrances which may hereafter encumber the Properties or any portion thereof.

ARTICLE X

INSURANCE

Section 1. Insurance to be Maintained by the Corporation. The Corporation shall maintain in full force and effect public liability and property damage insurance in such amounts and in such forms as shall be required by the Corporation. All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner. The Corporation may also obtain such other insurance coverage as it may determine to be desirable and necessary.

Section 2. Premiums. Premiums for insurance policies purchased by the Corporation shall be paid by the Corporation and charged ratable to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Corporation for the benefit of the Corporation and the Owners.

ARTICLE XI

GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%)

of each class of the Members, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Members; provided that prior to the sale of the first Lot or Living Unit this Declaration may be amended by the Declarant without consent of the Members; and, further, Declarant may amend this Declaration to permit subjecting hereto additional lands as specified in Article VII, Section 2, herein.

No amendment which would change or delete any provisions herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

This Declaration may also be amended by the Declarant without the consent of the Members if such amendment is required for approval by the Federal Housing Administration, the Veterans Administration, or the Federal National Mortgage Association.

Section 4. Recreational Facilities. The general plan of development provides for recreational amenities within the Community Common Properties. These amenities are provided for the benefit of all Owners, and shall be maintained, as part of the Community Common Properties out of Assessments imposed on all Owners. nevertheless, the Corporation shall have the right to form an association, (the Operator) which may be a corporation or other lawful entity, and assign to it the maintenance and operation of the recreational facilities, on a non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Corporation may deem reasonable and necessary. The Operator shall maintain and operate said recreational facilities for the benefit of every Owner in good standing with the Corporation. It may charge dues or membership fees sufficient to defray operating costs and require that current payment be made in order for any Owner to enjoy use of the facilities. The Operator may also permit use of the facilities by non-Owners and non-residents of the Properties, upon payment of required dues or membership fees, and

subject to priority of Owners in good standing with the Operator and Corporation. The Operator may impose reasonable regulations regarding the use of the facilities to insure accessibility, safety, harmony, and preservation of the facilities.

There is reserved to the Corporation the right to revoke the assignment provided for herein and to assume the operation of the recreational facilities, on a membership basis, and charge for the right to use the same in the manner set forth above.

ARTICLE XII

ELECTRICAL SERVICE

Declarant reserves the right to subject the above described property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot and Living Unit within said property.

ARTICLE XIII

ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls and other structures, shall be undertaken upon the Properties, unless, the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to Declarant and expressly approved in writing by it. No subsequent alteration or modification of improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Corporation, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event that the Declarant, or the Board of Directors or Architectural Committee, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will be deemed granted, and the requirements of this Article will

be deemed to have been fully met; provided, that the plan and specifications required to be submitted shall not be deemed to have been received by the Declarant, or the Corporation if they contain erroneous data or fail to present adequate information upon which the Declarant or the Board of Directors or Architectural Committee, as the case may be, can arrive at a decision.

The Declarant shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection or installation of improvements to inspect the work being undertake, and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE XIV

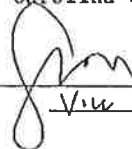
EXTERIOR MAINTENANCE

The maintenance of lots and improvements constructed thereon shall be the duty of the owners of such lots and shall not normally be interfered with by the Corporation or any person. If, however, in the opinion of the Corporation, any owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the opinion of the Corporation, the Corporation in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to the owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, seeding and correction of items of erosion control. The Corporation shall have an easement for the purpose of accomplishing the foregoing. The cost incurred by the Corporation in rendering all such services, plus a service charge of fifteen (15%) percent of such cost, shall be added to and become a part of the assessment to which such lot is subject.

IN WITNESS WHEREOF, the undersigned, being the Declarant l.
hereunto set its hand and seal this day of March, 1985.

(CORPORATE SEAL)

THE HARLON GROUP OF NORTH CAROLINA,
a North Carolina corporation

By:  President



STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, Dorothy O. Bridger, a Notary Public, certify that Rosemary Battista, personally came before me this day and acknowledged that she is Assistant Secretary of THE HARLON GROUP OF NORTH CAROLINA, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its vice President, sealed with its corporate seal, and attested by herself as its Assistant Secretary.

WITNESS my hand and Notarial Stamp/Seal this 8th day of March, 1985.

Dorothy O. Bridges
Notary Public

My Commission expires:

February 2, 1988

DOROTHY O. BRIDGER, Notary Public
RALEIGH, WAKE COUNTY, NORTH CAROLINA
MY COMMISSION EXPIRES: 2 8 88

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of _____

Dorothy O. Bridges

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

KENNETH C. WILKINS, Register of Deeds

By Amey W. Ray
Asst. / Deputy Register of Deeds

EXHIBIT A

Beginning at a point in the centerline of Lake Pine Road, a 70-foot right-of-way, said Beginning point being located 1,011.29 feet North 13 degrees 58 minutes 08 seconds East from the intersection of the centerline of Cork Harbour Drive and Lake Pine Drive; runs thence North 06 degrees 05 minutes 44 seconds East 429.47 feet along the centerline of Lake Pine Road to a point; runs thence leaving the centerline of Lake Pine Road and along the southern line of Pod 5 of Parcel BB of the Kildaire Farms Subdivision North 88 degrees 35 minutes 44 seconds East 595.00 feet to a point and South 69 degrees 51 minutes 59 seconds East 363.78 feet to a point in the high water line of a future lake; runs thence with the high water line of a future lake the following courses and distances:

South 15 degrees 29 minutes 47 seconds West 65.47 feet to a point, South 03 degrees 00 minutes 46 seconds West 108.44 feet to a point, South 04 degrees 41 minutes 09 seconds 48.12 feet to a point, South 17 degrees 18 minutes 02 seconds West 37.67 feet to a point, South 24 degrees 57 minutes 46 seconds West 50.30 feet to a point, South 19 degrees 41 minutes 00 seconds West 25.67 feet to a point, South 09 degrees 56 minutes 17 seconds West 233.46 feet to a point, South 06 degrees 32 minutes 12 seconds East 37.98 feet to a point, South 06 degrees 18 minutes 06 seconds West 32.23 feet to a point, South 06 degrees 09 minutes 07 seconds West 33.01 feet to a point, South 24 degrees 55 minutes 18 seconds East 42.91 feet to a point, South 51 degrees 22 minutes 20 seconds East 55.10 feet to a point, South 41 degrees 38 minutes 01 second East 28.40 feet to a point, South 14 degrees 16 minutes 21 seconds East 23.12 feet to a point, South 14 degrees 16 minutes 06 seconds West 47.05 feet to a point, South 54 degrees 43 minutes 16 seconds West 35.39 feet to a point, South 83 degrees 39 minutes 35 seconds West 32.04 feet to a point, North 72 degrees 39 minutes 48 seconds West 38.91 feet to a point, North 52 degrees 04 minutes 28 seconds West 136.54 feet to a point, North 60 degrees 27 minutes 40 seconds West 101.66 feet to a point, North 67 degrees 16 minutes 36 seconds West 133.81 feet to a point, North 50 degrees 32 minutes 35 seconds West 66.18 feet to a point, North 60 degrees 44 minutes 35 seconds West 48.66 feet to a point, North 83 degrees 45 minutes 20 seconds West 142.75 feet to a point, North 58 degrees 51 minutes 05 seconds West 62.69 feet to a point, North 75 degrees 24 minutes 12 seconds West 38.99 feet to a point, North 55 degrees 53 minutes 37 seconds West 37.50 feet to a point, North 41 degrees 22 minutes 28 seconds West 50.55 feet to a point, North 24 degrees 54 minutes 17 seconds West 66.74 feet to a point, North 53 degrees 07 minutes 48 seconds West 16.34 feet to a point; runs thence North 06 degrees 05 minutes 44 seconds East 50.03 feet to a point; runs thence North 67 degrees 41 minutes 34 seconds West 107.19 feet to a point in the centerline of Lake Pine Road, the point and place of Beginning, being all of Parcel BB - Pod 6 and containing 14.94417 acres as shown on that plat of actual survey entitled "Harlon/Kildaire Farms Parcel 'BB' Pod 6", dated November 8, 1984, and prepared by James S. Murphy, Registered Land Surveyor.

Together with and including a non-exclusive easement for ingress, egress and regress over and upon the rights of way of Lake Pine Road and Cork Harbour Drive.

Return to: MANNING, FULTON & SKINNER, Post Office Box 1150, Raleigh, NC, 27602

DECLARATION
OF COVENANTS,
OF
KILDAIRE FARMS PLANNED UNIT DEVELOPMENT

REGISTERED
DECLARATION
MAR 15 1 55 PM '85
REGISTERED RECORDS
WAKE COUNTY, NC

THIS DECLARATION, made this 8 day of March, 1985, by THE HARLON GROUP OF NORTH CAROLINA, INC., hereinafter called "Declarant", a North Carolina corporation with a principal office in Raleigh, Wake County, North Carolina.

W I T N E S S E T H

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and desires to create thereon an exclusive residential community to be known as Kildaire Farms Development with permanent parks, playgrounds, open spaces, streets, roads, walkways and other facilities for the benefit of the said enjoyment which may be shared and enjoyed by all residents of Kildaire Farms Development; and

WHEREAS, Kildaire Farms Development will be developed in stages or phases containing townhouses, condominiums, single family dwellings, and multi-family dwellings; and,

WHEREAS, the various developed phases also will be subject to associations of owners of these dwelling units; and,

WHEREAS, in order to provide a coordination and continuity among the various phased communities, the owners of dwelling units in those communities, and the associations having jurisdiction over those communities, it is deemed appropriate to have an association in which all Owners in Kildaire Farms Development are members; and

WHEREAS, Declarant desires to have areas of the Development owned by this Association for the benefit of all owners within the Development; and

WHEREAS, Declarant desires that some parks, playgrounds, open spaces, streets, roads, walkways and other facilities be owned and maintained exclusively for the benefit of each local community and be designated "COMMUNITY COMMON PROPERTIES" and that other such areas and facilities be owned and maintained for the benefit of the larger community and be designated "COMMON AREA"; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection and enhancement of the values and amenities in Kildaire Farms Development, and to insure the residents' enjoyment of the specific rights, privileges and easements in the Community Common Properties and Common Area and facilities, to create organizations to which should be delegated and assigned the powers of owning, maintaining and administering the Community Common Properties and Common Area and facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina, as a non-profit corporation, KF Homeowners Association II, Inc., for the purpose of exercising the functions aforesaid within the said larger community known as Kildaire Farms Development.

NOW THEREFORE, the Declarant declares that the real property described in Article II, and such other parcels as may be subjected hereto, as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration or amendment hereto (unless the context shall prohibit) shall have the following meanings:

(a) "Kildaire Farms Development" (or "Development") shall mean and refer to all properties described as tracts 1, 8 and 10 in that deed from Kildaire Farms Development Corporation to The Harlon Group of North Carolina dated and recorded January 6, 1984 in Book 3223, Page 143, Wake County Registry.

(b) "Corporation" shall mean and refer to KF Homeowners Association II, Inc., its successors and assigns.

(c) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments hereto as are recorded in the Office of the Register of Deeds, Wake County, North Carolina.

(d) "Properties" shall mean and refer to that certain real property described in this Declaration in Article II, Section 1, and such additions as may hereafter be subjected to this Declaration and brought within the jurisdiction of the Corporation.

(e) "Common Area" shall mean and refer singularly or collectively as applicable, to all land, improvements and other properties heretofore, or hereafter, owned by, or in the possession of, any association of owners of Properties, and the common areas and facilities subject to control and maintenance assessment by any condominium homeowners association of lands subject to this Declaration as amended from time to time, in both cases including specifically those areas so designated within properties that are hereafter subjected hereto. The term shall include any limited common area and facilities.

(f) "Community Common Properties" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by, or in the possession of, the Corporation.

(g) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family dwelling unit and shall include single family residences, condominium units, townhouses, villas, and any other single family dwelling unit located on the Properties, including attached or detached units.

(h) "Member" shall mean and refer to an "Owner" subject to assessments as provided in this Declaration.

(i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Living Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(j) "Declarant" shall mean and refer to The Harlon Group of North Carolina, Inc., a North Carolina corporation, its designated successors and assigns.

(k) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plat recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration as it may be amended, but shall not include any Lot specifically designated as being excluded on any recorded map, or any Common Area or Community Common Properties.

(l) "Access Area" shall mean and refer to the areas designated as such on the various maps of the Kildaire Farms Development.

(m) "General Plan of Development" shall mean and refer to the general plan on display in the sales pavilion and heretofore submitted to the Town of Cary.

ARTICLE II

Property subject to this declaration

ADDITIONS THERETO

Section 1. Existing Property. The real property which hereby is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described as shown on Exhibit A attached hereto and incorporated herein by reference.

Section 2. Additions Included Within. Additional lands within Kildaire Farms Development herein may be annexed by Declarant, without the consent of the members, within fifteen (15) years of the date of this instrument provided that the annexation is in accord with the general plan heretofore approved by the Town of Cary or the Federal Housing Authority and the V.A.

Section 3. Mergers. Upon a merger or consolidation of the Corporation with any other corporation, its properties, rights and obligations may be transferred to the surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may be added to the properties, rights and obligations of this Corporation, as a surviving corporation. The surviving or consolidated

corporation may administer the covenants and restrictions established by this Declaration within the Existing Property, together with any covenants and restrictions encumbering any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration as affecting the Properties except as hereinafter provided.

ARTICLE III

MEMBERSHIP

Section 1. Those Entitled to Membership. Membership in the Corporation shall be appurtenant to and may not be separated from ownership of any Lot, or Living Unit. Ownership of such Unit shall be the sole qualification for membership.

ARTICLE IV

VOTING RIGHTS

Section 1. Class of Voting Membership. The Corporation shall have two classes of voting membership:

Class A. Class A member(s) shall be all Owners except Declarant. Class A members shall be entitled to one vote for each Lot or Living Unit owned by them. When more than one person owns any Lot, or Living Unit, all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as the majority of such persons among themselves determine. At any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such Lot or Living Unit, shall be conclusive, unless another of such persons contests such representation at such meeting prior to the casting of such vote.

Class B. The Class B member(s) shall be Declarant. The Class B member(s) shall be entitled to three (3) votes for each Lot and Living Unit owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, provided, however, that the Class B membership shall be

reinstated if thereafter, and before the time stated in sub-paragraph (b) below, additional lands are subjected hereto without the assent of Class A members pursuant to Article VII, Section 2, below, or

(b) on January 1, 2001.

Section 2. Membership Sub-Classes. The Board of Directors of the Corporation shall have authority to, and is hereby authorized to, at its discretion, create membership sub-classes of those who are Class A members and to designate and to delineate sub-membership areas within the Development. Each such sub-membership classification and area delineation shall consist of Owners of like or similar type dwelling units, such as Owners of all townhouses or a particular group of townhouses, or Owners of all condominium units or a particular group of condominium units.

Section 3. Purposes of Sub-Classes. Sub-classes of Class A membership may be designated by the Board of Directors for the purpose of establishing special assessment groups consisting solely of certain Owners to require such Owners of any such designated membership sub-classification to pay assessments which may differ from those required of other Owners based upon the obligation of the Corporation to provide different types or extents or services, or maintenance to such Owners.

ARTICLE V

PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTIES

Section 1. Owners' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area together with, and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Community Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot and Living Unit, subject to the following provisions:

(a) the right of the Corporation to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Community Common Properties;

(b) the right of the Corporation to suspend the voting

rights and right to use the recreational or other Community Common Properties facilities by an Owner for any period during which any assessment against his Lot or Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Corporation to dedicate, sell or transfer all or any part of the Community Common Properties to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members, and an instrument reflecting such approval has been recorded. On such instrument the Secretary of the Corporation shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale or transfer and such certificate shall be conclusive as to the matters set forth therein and binding upon all Owners, their successors and assigns. Anything above set forth notwithstanding, however, conveyances for utility purposes as specified herein may be made without consent of the members;

(d) the right of the Corporation to limit the number of guests of members;

(e) the right of the Corporation, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Community Common Properties and facilities, and in aid thereof to mortgage said property, and the rights of a mortgagee in said Properties shall be subordinate to the rights of the Members hereunder;

(f) the rights of the members to the use of parking spaces, as may be provided by the Board of Directors;

(g) the right of the Corporation in accordance with its Articles of Incorporation and By-Laws to impose rules and regulations providing for the use and enjoyment of the Community Common Properties, which rules and regulations may further restrict the use of the Community Common Properties.

(h) the rights of Owners of Lots, and Living Units located upon other lands made subject hereto, to the enjoyment and ingress, egress and access, to and over the Community Common Properties.

Section 2. Title to the Community Common Properties. Declarant hereby covenants for itself, its successors and assigns, as Properties are annexed, that it will convey fee simple title to the Community Common Properties within the annexed Properties to the Corporation, free and clear of all financial encumbrances and liens, prior to the conveyance of the first Lot to a third party but subject to utility, service, storm drainage and other similar service or utility easements. Declarant will also convey to Corporation those common areas that are parts of other portions of Kildaire Farms Development as those portions are subjected hereto until all common areas, as shown on the plans approved by the Town of Cary, have been conveyed to the Corporation.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations for Assessments. Declarant, hereby covenants, and each Owner of any Lot or Living Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant, and agree to pay to Corporation: (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, both as assessed by Corporation, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Community Common Properties and public roads if the Corporation shall default in payment thereof, all as hereinafter provided. The annual special assessments due with respect to each Lot or Living Unit, together with interest, and costs, and reasonable attorney's fees for collection, shall be a charge against and a continuing lien upon such Lot or Living Unit. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Living Unit at the time when the assessment was made.

Such personal obligation for the delinquent assessments shall not pass to successors in title to such Owners unless expressly assumed by them.

The Corporation shall also have the authority, through its Board of Directors, to establish, fix and levy a special assessment against any Lot, or Living Unit, to secure any obligation of the Owner thereof to the Corporation, arising from breach by such Owner of any of the provisions of this Declaration, which breach shall require the expenditure of time and money or both, by the Corporation for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay all assessments levied by the Corporation on his Lot or Living Unit with ten (10) days after delivery of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date of delivery of such invoice, the amount of such charges, together with interest at the legal rate until paid and all costs expended by Corporation in the collection thereof including reasonable attorneys fees, shall become a lien upon said Owner's parcel and shall continue to be a lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Community Common Properties and the Common Area the procurement and maintenance of insurance in accordance with the By-Laws, the employment of counsel, accountants and other professionals for the Corporation when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment shall be ONE HUNDRED TWENTY and no/100 - Dollars (\$ 120.00) per Lot or Living Unit.

(a) From and after January 1 of the year immediately

following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment may be increased without a vote of members, effective January 1 of each year, if such increase is not more than the greater of (1) 5% of the prior annual assessment or (2) an increase based solely upon the rise, if any, of the Consumer Price Index (or such index as may succeed it published by the Department of Labor, Washington, D.C.), for the preceding month of July as compared with that month a year earlier.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner other than Declarant, the maximum annual assessment may be increased above the that permitted under paragraph (a) above, by a vote of the members, provided that any such increases above such maximum shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the permitted maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Corporation 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 any construction, reconstruction, restoration, repair or replacement of a capital improvement located upon the Community Common Properties, or Common Area, or any extraordinary maintenance, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class

of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units, and may be collected on a monthly, or less frequent, basis. However, if a sub-classes of membership are created by the Board of Directors, as provided herein, such assessments shall be fixed and uniform rates for all Lots or Living Units within any sub-class. Assessments may differ between areas having different sub-classes of membership. Assessment with respect to a sub-class of membership shall be determined by the cost to the Corporation, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to such sub-class of memberships. Provided, however, that the assessment for Lots or Living Units owned by Declarant, which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Corporation, but shall not be less than twenty-five percent (25%) of the regular assessments for such Lots or Units.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots and Living Units on the first day of the month following the conveyance of the Community Common Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation, setting forth whether the assessments on a specified Lot or Living Unit have been paid. a property executed certificate of the

Corporation, as to the status of assessments on a Lot or Living Unit shall be binding upon the Corporation, as of the date of issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by North Carolina law. The Corporation may bring an action of law against the Owner personally obligated to pay the same, and/or foreclose the lien against the subject property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Common Properties or abandonment of his Lot or Living Unit.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot or Living Unit shall not affect any then existing lien or then due assessment. However, the sale or transfer of any Lot or Living Unit pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but not from liability for any assessments thereafter becoming due.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII

ADDITIONAL PROPERTIES

Section 1. Approval and Votes. Subjecting additional property to this Declaration, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in

advance of the meeting setting forth the purposes of the meeting. The presence of the members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the proceeding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Declarant's Authority. If within fifteen (15) years of the date hereof, the Declarant should desire to subject to this Declaration additional land within the boundaries shown on the general plan of Kildaire Farms Planned Unit Development heretofore submitted to the Town of Cary or the Federal Housing Administration (F.H.A.) and the Veterans Administration (V.A.), such land may be subjected to this Declaration by the Declarant without the consent of members provided that such action is in accord with the general plan heretofore approved by the Town of Cary or F.H.A. and V.A.; and in doing so, Declarant may file and record such amendments to this Declaration as are necessary, without the consent of any other members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Corporation.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Corporation shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Properties, the Community Common Properties and the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties, except the Common Areas and Community Properties (except for the temporary

office of the Declarant and/or model units used by Declarant and such construction materials, storage, equipment, signs and parking of Declarant) shall be used for other than residential purposes and for purposes incidental or accessory thereto.

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

Section 4. Animals No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept and maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

ARTICLE IX

EASEMENTS

Section 1. Utility Easements. All of the Properties, including Lots, Community Common Properties and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors or successors in title, prior to the subjecting of the Properties to this Declaration.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachment, settlement or shifting; providing however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Section 3. Unintentional Encroachments. In the event that any Lot or Living Unit shall encroach upon any Community Common Properties or Common Area, or upon any other Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner of the first described Lot

or Living Unit or agents or such Owner, then an easement appurtenant to such Lot or Living Unit shall exist for the continuance and maintenance of such encroachment upon the Community Common Properties or other Lot or Living Unit for so long as such encroachment shall exist; and, in the event that any portion of the Community Common Properties shall encroach upon any Lot or Living Unit, then as easement shall exist for the continuance and maintenance of such encroachment of the Community Common Properties onto any such Lot or Living Unit, for so long as such encroachment shall exist.

Section 4. Overhanging Roofs and Eaves. The owner of each Lot and Living Unit, is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and Living Unit and/or the Community Common Properties, as the case may be, for over-hanging roofs and eaves and the maintenance thereof.

Section 5. Easement for the Benefit of the Town of Cary. An easement is hereby established for the benefit of the Town of Cary, and such other governmental agencies to which the Town of Cary may assign its rights herein, over all Community Common Properties and Common Areas for the setting, removing and reading of water meters (which shall be separate for each Living Unit), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Properties.

Section 6. Property of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration, and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners of the Lots, Common Areas and the Community Common Properties, and other persons in whose favor such easements have been granted, as the case may be, superior to all other encumbrances which may hereafter encumber the Properties or any portion thereof.

ARTICLE X

INSURANCE

Section 1. Insurance to be Maintained by the Corporation. The Corporation shall maintain in full force and effect public liability and property damage insurance in such amounts and in such forms as shall be required by the Corporation. All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner. The Corporation may also obtain such other insurance coverage as it may determine to be desirable and necessary.

Section 2. Premiums. Premiums for insurance policies purchased by the Corporation shall be paid by the Corporation and charged ratable to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Corporation for the benefit of the Corporation and the Owners.

ARTICLE XI

GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%)

of each class of the Members, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Members; provided that prior to the sale of the first Lot or Living Unit this Declaration may be amended by the Declarant without consent of the Members; and, further, Declarant may amend this Declaration to permit subjecting hereto additional lands as specified in Article VII, Section 2, herein.

No amendment which would change or delete any provisions herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

This Declaration may also be amended by the Declarant without the consent of the Members if such amendment is required for approval by the Federal Housing Administration, the Veterans Administration, or the Federal National Mortgage Association.

Section 4. Recreational Facilities. The general plan of development provides for recreational amenities within the Community Common Properties. These amenities are provided for the benefit of all Owners, and shall be maintained, as part of the Community Common Properties out of Assessments imposed on all Owners. nevertheless, the Corporation shall have the right to form an association, (the Operator) which may be a corporation or other lawful entity, and assign to it the maintenance and operation of the recreational facilities, on a non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Corporation may deem reasonable and necessary. The Operator shall maintain and operate said recreational facilities for the benefit of every Owner in good standing with the Corporation. It may charge dues or membership fees sufficient to defray operating costs and require that current payment be made in order for any Owner to enjoy use of the facilities. The Operator may also permit use of the facilities by non-Owners and non-residents of the Properties, upon payment of required dues or membership fees, and

subject to priority of Owners in good standing with the Operator and Corporation. The Operator may impose reasonable regulations regarding the use of the facilities to insure accessibility, safety, harmony, and preservation of the facilities.

There is reserved to the Corporation the right to revoke the assignment provided for herein and to assume the operation of the recreational facilities, on a membership basis, and charge for the right to use the same in the manner set forth above.

ARTICLE XII

ELECTRICAL SERVICE

Declarant reserves the right to subject the above described property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot and Living Unit within said property.

ARTICLE XIII

ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls and other structures, shall be undertaken upon the Properties, unless, the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to Declarant and expressly approved in writing by it. No subsequent alteration or modification of improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Corporation, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event that the Declarant, or the Board of Directors or Architectural Committee, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will be deemed granted, and the requirements of this Article will

be deemed to have been fully met; provided, that the plan and specifications required to be submitted shall not be deemed to have been received by the Declarant, or the Corporation if they contain erroneous data or fail to present adequate information upon which the Declarant or the Board of Directors or Architectural Committee, as the case may be, can arrive at a decision.

The Declarant shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection or installation of improvements to inspect the work being undertake, and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE XIV

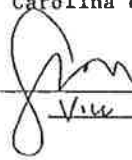
EXTERIOR MAINTENANCE

The maintenance of lots and improvements constructed thereon shall be the duty of the owners of such lots and shall not normally be interfered with by the Corporation or any person. If, however, in the opinion of the Corporation, any owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the opinion of the Corporation, the Corporation in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to the owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, seeding and correction of items of erosion control. The Corporation shall have an easement for the purpose of accomplishing the foregoing. The cost incurred by the Corporation in rendering all such services, plus a service charge of fifteen (15%) percent of such cost, shall be added to and become a part of the assessment to which such lot is subject.

IN WITNESS WHEREOF, the undersigned, being the Declarant i.
hereunto set its hand and seal this day of March, 1985.

(CORPORATE SEAL)

THE HARLON GROUP OF NORTH CAROLINA,
a North Carolina corporation

By:  President



STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, Dorothy O. Bridger, a Notary Public, certify that Rosemary Battista, personally came before me this day and acknowledged that she is Assistant Secretary of THE HARLOW GROUP OF NORTH CAROLINA, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its vice President, sealed with its corporate seal, and attested by her self as its Assistant Secretary.

WITNESS my hand and Notarial Stamp/Seal this 8th day of March, 1985.

Dorothy O. Bridger
Notary Public

My Commission expires:

February 2, 1988

DOROTHY O. BRIDGER, Notary Public
RALEIGH, WAKE COUNTY, NORTH CAROLINA
MY COMMISSION EXPIRES: 2 8 88

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of _____

Dorothy O. Bridger

_____, Notary(ies) Public is

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

KENNETH C. WILKINS, Register of Deeds

By _____

Asst./Deputy Register of Deeds

Amey W. Ray

EXHIBIT A

Beginning at a point in the centerline of Lake Pine Road, a 70-foot right-of-way, said Beginning point being located 1,011.29 feet North 13 degrees 58 minutes 08 seconds East from the intersection of the centerline of Cork Harbour Drive and Lake Pine Drive; runs thence North 06 degrees 05 minutes 44 seconds East 429.47 feet along the centerline of Lake Pine Road to a point; runs thence leaving the centerline of Lake Pine Road and along the southern line of Pod 5 of Parcel BB of the Kildaire Farms Subdivision North 88 degrees 35 minutes 44 seconds East 595.00 feet to a point and South 69 degrees 51 minutes 59 seconds East 363.78 feet to a point in the high water line of a future lake; runs thence with the high water line of a future lake the following courses and distances:

South 15 degrees 29 minutes 47 seconds West 65.47 feet to a point, South 03 degrees 00 minutes 46 seconds West 108.44 feet to a point, South 04 degrees 41 minutes 09 seconds 48.12 feet to a point, South 17 degrees 18 minutes 02 seconds West 37.67 feet to a point, South 24 degrees 57 minutes 46 seconds West 50.30 feet to a point, South 19 degrees 41 minutes 00 seconds West 25.67 feet to a point, South 09 degrees 56 minutes 17 seconds West 233.46 feet to a point, South 06 degrees 32 minutes 12 seconds East 37.98 feet to a point, South 06 degrees 18 minutes 06 seconds West 32.23 feet to a point, South 06 degrees 09 minutes 07 seconds West 33.01 feet to a point, South 24 degrees 55 minutes 18 seconds East 42.91 feet to a point, South 51 degrees 22 minutes 20 seconds East 55.10 feet to a point, South 41 degrees 38 minutes 01 second East 28.40 feet to a point, South 14 degrees 16 minutes 21 seconds East 23.12 feet to a point, South 14 degrees 16 minutes 06 seconds West 47.05 feet to a point, South 54 degrees 43 minutes 16 seconds West 35.39 feet to a point, South 83 degrees 39 minutes 35 seconds West 32.04 feet to a point, North 72 degrees 39 minutes 48 seconds West 38.91 feet to a point, North 52 degrees 04 minutes 28 seconds West 136.54 feet to a point, North 60 degrees 27 minutes 40 seconds West 101.66 feet to a point, North 67 degrees 16 minutes 36 seconds West 133.81 feet to a point, North 50 degrees 32 minutes 35 seconds West 66.18 feet to a point, North 60 degrees 44 minutes 35 seconds West 48.66 feet to a point, North 83 degrees 45 minutes 20 seconds West 142.75 feet to a point, North 58 degrees 51 minutes 05 seconds West 62.69 feet to a point, North 75 degrees 24 minutes 12 seconds West 38.99 feet to a point, North 55 degrees 53 minutes 37 seconds West 37.50 feet to a point, North 41 degrees 22 minutes 28 seconds West 50.55 feet to a point, North 24 degrees 54 minutes 17 seconds West 66.74 feet to a point, North 53 degrees 07 minutes 48 seconds West 16.34 feet to a point; runs thence North 06 degrees 05 minutes 44 seconds East 50.03 feet to a point; runs thence North 67 degrees 41 minutes 34 seconds West 107.19 feet to a point in the centerline of Lake Pine Road, the point and place of Beginning, being all of Parcel BB - Pod 6 and containing 14.94417 acres as shown on that plat of actual survey entitled "Harlon/Kildaire Farms Parcel 'BB' Pod 6", dated November 8, 1984, and prepared by James S. Murphy, Registered Land Surveyor.

Together with and including a non-exclusive easement for ingress, egress and regress over and upon the rights of way of Lake Pine Road and Cork Harbour Drive.