

Return To: Henry W. Bland
P. O. Box 2021
Raleigh, NC 27601
7526PG0339

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FAIRLAKE COMMUNITY ASSOCIATION**

000519

PRESENTED
FOR
REGISTRATION
97 JUN 25 PM 3:38
LAURA L. BRIDICK
REGISTER OF DEEDS
WAKE COUNTY

10000

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FAIRLAKE COMMUNITY ASSOCIATION**

TABLE OF CONTENTS

	PAGE
RECITALS	1
ARTICLE I. DEFINITIONS	2
ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION	4
Section 1. Property Made Subject To Declaration	4
Section 2. Existing Property	4
Section 3. Mergers	4
ARTICLE III. ANNEXATION OF ADDITIONAL PROPERTIES	5
Section 1. Annexation by Members	5
Section 2. Annexation by Declarant	6
Section 3. Conveyance of Community Common Properties	6
Section 4. Reserved Declarant Rights	7
Section 5. Town of Wake Forest	7
ARTICLE IV. MEMBERSHIP	7
ARTICLE V. VOTING RIGHTS	7
Section 1. Classes of Voting Membership	7
Section 2. Membership Sub-Classes	9
Section 3. Purpose of Sub-Classes	9
ARTICLE VI. PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTIES ...	9
Section 1. Owners' Easements of Enjoyment	9
Section 2. Delegation of Use	11
Section 3. Title to the Community Common Properties	12
Section 4. Bodies of Water	12
Section 5. Utility Lines	13

ARTICLE VII. COVENANT FOR MAINTENANCE OF ASSESSMENTS	13
Section 1. Creation of the Lien and Personal Obligation of Assessments	13
Section 2. Purpose of Assessments	14
Section 3. Maximum Annual Assessment and Annual Assessment-Class A Lots	15
Section 4. Special Assessments for Capital Improvements	16
Section 5. Notice and Quorum for Any Action Authorized Under §§ 3, 4, and 5	16
Section 6. Uniform Rate of Assessment	16
Section 7. Date of Commencement of Annual Assessments: Due Dates	17
Section 8. Effect of Nonpayment of Assessments: Remedies of the Association	18
Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes	18
Section 10. Exempt Property	18
ARTICLE VIII. USE RESTRICTIONS	19
Section 1. Rules and Regulations	19
Section 2. Square Footage	19
Section 3. Building Setbacks	19
Section 4. Use of Properties	20
Section 5. Quiet Enjoyment	20
Section 6. Animals	20
Section 7. Obstructions, etc.	20
Section 8. Signs	21
Section 9. TV Antennas and Dishes	21
Section 10. Impervious Surface Areas	21
Section 11. Lakes, Water Bodies and Wetlands	22
ARTICLE IX. EASEMENTS	22
Section 1. Utility Easements	22
Section 2. Easement for Lake and Related Maintenance	22
Section 3. Adjoining Areas	23
Section 4. Use of Properties	23
Section 5. Overhanging Roofs and Eaves	24
Section 6. Priority of Easements	24
ARTICLE X. INSURANCE	24
Section 1. Insurance to be Maintained by the Association	24
Section 2. Premiums	25
Section 3. Insurance Beneficiaries	25
ARTICLE XI. ELECTRICAL SERVICE	25

ARTICLE XII. ARCHITECTURAL CONTROL AND INSPECTION	25
Section 1. General Provisions	25
Section 2. No Waiver of Future Approvals	27
Section 3. Limitation of Liability	27
ARTICLE XIII. EXTERIOR MAINTENANCE	28
Section 1. Duty to Maintain	28
Section 2. Remedies of Association	28
ARTICLE XIV. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	29
Section 1. Agreement to Avoid Litigation	29
Section 2. Claims	29
Section 3. Mandatory Procedures	30
Section 4. Allocation of Costs of Resolving Claims	32
Section 5. Enforcement of Resolution	33
ARTICLE XV. GENERAL PROVISIONS	33
Section 1. Enforcement	33
Section 2. Severability of Provisions	34
Section 3. Duration and Amendments	34
Section 4. Availability of Documents	36
Section 5. Rights of Eligible Mortgage Holders	36
Section 6. Condemnation	37
Section 7. Titles	37
Section 8. Number and Gender	37
Section 9. No Exemption	37
Section 10. Conflict Between Declaration and Articles of Incorporation, Bylaws ..	37
Section 11. Laws of North Carolina	38
Section 12. Assignment	38
Section 13. Notices of Town of Wake Forest	38

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
FAIRLAKE COMMUNITY ASSOCIATION

THIS DECLARATION, made this _____ day of _____, 1997 by WENTWORTH PARK, INC., a North Carolina Corporation, (hereinafter called "Declarant"), with its principal office in Raleigh, Wake County, North Carolina;

W I T N E S S E T H :

WHEREAS, in order to provide a coordination and continuity among the various phased communities, the owners of dwelling units in those communities, it is deemed appropriate to have an association in which all owners in Fairlake Community Association are members; and,

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

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

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, Fairlake Community Association, for the purpose of exercising the functions aforesaid within the community known as Fairlake Community Association,

NOW THEREFORE, the Declarant declares that the real property described in Article II, and such additions thereto, and annexation thereto, 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

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) "Access Area" shall mean and refer to the areas designated as such on the various maps of Fairlake.
- (b) "Association" shall mean and refer to Fairlake Community Association, its successors and assigns.
- (c) "Community Common Property" or "Common Area" or "Common Property" shall mean and refer singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by, or located in an easement granted to or reserved by, the Association and which has/have been designated by Declarant or the association as "Community Common Property", "Common Area", "Open Space", "Landscape Buffer", or some other, similarly descriptive term, on a recorded plat, in a Supplemental Declaration, or in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as Common Property by the Declarant or the Association.

All Common Area or Community Common Property shall be subject to the terms and conditions of this Declaration and the ordinances of the Town of Wake Forest.

(d) "Declarant" shall mean and refer to Wentworth Park, Inc., its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns should acquire more than one undeveloped Lot or Living Unit location for the purpose of development. The development of a Lot or Living Unit site shall mean and refer to the construction of a residence thereon, including a condominium unit.

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

(f) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family residence 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.

(g) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plot including exact metes and bounds descriptions and 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.

(h) "Member" shall mean and refer to an "Owner" subject to assessment 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) "Properties" shall mean and refer to that certain real property described in Exhibit A hereto, and any annexation thereto.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject To Declaration. The Properties described in Exhibit A hereto and any annexation are hereby made subject to this Declaration and the Properties shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

Section 2. 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 in Exhibit A hereto.

Section 3. Mergers. Upon a merger or consolidation of the Association with another organization as provided by its By-Laws, its properties, rights and obligations may be transferred to another surviving or consolidated Homeowner's Association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger; provided however, no such merger shall be effective until it is approved by the Wake Forest Town Attorney. The surviving or consolidated homeowner's corporation may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one

scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members: Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Property only if two-thirds (2/3) of the votes entitled to be cast in each class of Members are cast in favor of annexation. A meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

For the purpose of such meeting, the presence of members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of members, shall constitute a quorum.

If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which he is entitled to vote either in favor of or against the annexation. If the number of votes cast at the

meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant. If within ten (10) years from the date of incorporation of the Association, the Declarant should develop additional land within the boundaries of all or any of the following four (4) tracts set forth below, such land may be annexed by the Declarant without the consent of members by the recordation of a Declaration of Annexation for such purpose:

TRACT 1: A tract consisting of sixty-seven (67) acres, more or less, of the land now or formerly known as the McMath land, and also commonly referred to as tax lot number 18 32.04-51-8549.

TRACT 2: A tract consisting of seventy-two (72) acres, more or less, now or formerly known as the Paschal land, and also commonly referred to as tax lot number 18 32.03-41-0851.

TRACT 3: A tract consisting of forty-one (41) acres, more or less, now or formerly known as the Ray land, and also commonly referred to as tax lot number 18 32.03-23-9036.

TRACT 4: A tract consisting of forty (40) acres, more or less, now or formerly known as the Estes land, and also commonly referred to as tax lot number 18 32.03-21-9739.

Section 3. Conveyance of Community Common Properties. The Declarant will convey any Community Common Properties in annexed areas in the same manner and is provided in Article VI Section 3, hereinbelow.

Section 4. Reserved Declarant Rights. The Declarant reserves the following development rights: (i) to add real estate to the properties in accordance with this Article III; (ii) to create Living Units; (iii) to add Community Common Properties; (iv) to modify or change Living Unit types; (v) to reallocate Living Units or Lots within the property; (vi) to withdraw undeveloped real estate from the Properties.

Section 5. Town of Wake Forest. Additional lands may be added to the Property pursuant to the terms of this Declaration and subject to the ordinances of the Town of Wake Forest.

ARTICLE IV

MEMBERSHIP

Every person or entity which is a record owner of a fee or undivided interest in any Living Unit which is subject to this Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment by the Association. Ownership of such Living Unit shall be the sole qualification for membership.

ARTICLE V

VOTING RIGHTS

Section 1. Classes of Voting Membership. The Association shall have three (3) classes of voting membership.

Class A. Class A members shall be all those Owners of Lots and Living Units with the exception of the Declarant (as defined in this Declaration). Class A members shall be entitled to one vote for each Lot, or Living Unit in which they hold the interest required for membership by ARTICLE IV. When more than one person holds such interest in 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; however, in no event may more than one vote be cast with respect to any one Lot. Fractional voting shall be prohibited. 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 the Declarant (as defined in the Declaration). The Class B member(s) shall be entitled to three (3) votes for each Lot or Living Unit owned. 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 equals the total votes outstanding in Class B membership; but provided that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, such additional lands are annexed to the Property without the assent of Class A members because of development of such additional lands by the Declarant, as provided for in Article III herein; or

(b) ten (10) years following the date of incorporation of the Association.

Section 2. Membership Sub-Classes. The Declarant shall have authority to, and is hereby authorized, at its discretion to 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, Owners of all condominium units or a particular group of condominium units and so forth for each type of dwelling unit.

Section 3. Purpose of Sub-Classes. Sub-classes of Class A membership may be designated by the Declarant for the purpose of establishing special assessment districts among similar class members because of a need, or obligation of any such designated membership sub-classification to pay assessments which may differ from those required of other sub-classifications based on the obligation upon the Association to provide differing degrees of care and maintenance to the several sub-classification membership areas.

ARTICLE VI

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 Community Common Properties, 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 and subject to the following provisions:

- (a) the right of the Association 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 Association 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 Living Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association 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 to by the members. No such dedication or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, conveyances for general utility purposes as specified herein may be made without consent of the members;
- (d) the Association, acting through its Board of Directors, from time to time may exchange with Declarant or any member a portion of the Community Common Properties for real property owned by the Declarant or such member, provided that the exchange is approved by the vote of fifty-one percent (51%) of each class of members at a meeting of the members of the Association duly held in accordance with its Bylaws; the property received by the Association shall be of approximately the same size as the portion of Community Common Properties exchanged; the property conveyed to the Association is free and clear of all encumbrances except the Declaration and easements for greenway,

drainage, utility, and sewer; the requirement to the Town Code of Wake Forest as to the exchange must be approved by the Planning Director of the Town of Wake Forest. Provided, however, where the exchange is done to eliminate an encroachment of a structure into the Community Common Properties or to allow the necessary setback between the structure and the property line, the notice and consent provisions hereinabove shall not be required and only the approval of the Board of Directors of the Association shall be necessary. The real property so acquired by the Association shall be a part of the Community Common Properties. The portion of the Community Common Properties so acquired by Declarant or a member, shall cease to be Community Common Properties and shall be subject to those provisions of the Declaration that were applicable to the properties conveyed to the Association by the Declarant or member.

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

(f) the right of the individual members the use of parking spaces as may be provided by the Board of Directors;

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

Section 2. Delegation of Use. Except as specifically limited hereinbelow, any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Community Common

Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Community Common Properties. Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Community Common Properties to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easements and encumbrances (not constituting a lien to secure the payment of money) and mineral interests outstanding and of record in Wake County, North Carolina, and the terms and conditions of this Declaration and any applicable supplemental Declaration, prior to the conveyance of the first Lot, Living Unit, or Multiple-Family Lot in that Phase.

Section 4. Bodies of Water. All bodies of water, including, without limitation, lakes, ponds, storm water detention ponds, wetlands, and streams within the Properties shall be accepted by the Association in their original condition and shall serve the Association as aesthetic and recreational amenities. Neither the Association nor the Declarant shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of any such bodies of water. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Properties or otherwise designated as wetlands by the Declarant. No Owner, except Declarant, shall have any right to pump or otherwise remove water from, nor to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in, any wetlands, ponds, storm water retention ponds and streams within the Properties. Applicable governmental agencies and the Declarant, so long as the Declarant owns any property subject to the Declaration or has the unexpired right to annex additional property to the Declaration, and thereafter the Association, shall have the sole right

to control the water level of any body of water located within the Properties and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, ponds, storm water retention ponds and streams within the Properties. The Declarant may install a fountain in any proposed lake, pond, or body of water, and the cost of maintenance and of utilities for the use of any such fountain shall be the responsibility of the Association.

Section 5. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, if any, nor the Declarant, nor a Builder shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, if formed, nor the Declarant, nor a Builder shall be held liable for any personal injury, illness or other loss or damage caused by the presence or malfunction of utility lines adjacent to, near, over or on the Properties. Each Owner, occupant, guest and invitee assumes all risk of personal injury, illness or other loss or damage arising from the presence of utility lines and further acknowledges that neither Declarant, nor the Association, if formed, nor a builder have made any representations or warranties, nor has any Owner, occupant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, Living Unit owned within the Properties, hereby covenants, and each Owner of any Lot, Living Unit and Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) to the appropriate governmental taxing authority, a pro rata share of

assessments against the Community Common Properties and for improvement and maintenance of public roads if the Association shall default in payment thereof, all as hereinafter provided. The annual and special assessments, together with interest, late fees, and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on any Lot and Living Unit to secure the liability of the Owner thereof to the Association 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 Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the parcel described in such conveyance to him within then ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at the address of the parcel or to such other address as said Owner shall have designated, the amount of such charge shall become a lien upon said Owner's parcel and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the

Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities, and for the use and enjoyment of the Community Common Properties, 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, the procurement and maintenance of insurance in accordance with this Declaration, the By-Laws, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment and Annual Assessment-Class A Lots.

Through and including December 31, 1997, the maximum annual assessment shall be Two-Hundred and Forty Dollars (\$240.00) per Lot.

(a) The maximum annual assessment for the calendar year beginning January 1, 1996, and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed five percent (5%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 1998, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(c) Subject to the provisions of this Article VII, the Board may fix the annual assessment at any amount not in excess of the maximum annual assessment allowed for the applicable calendar year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Community Common Properties, or any extraordinary maintenance of any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) 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 Sections 3, 4 and 5. Written notice of any meeting called for the propose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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 sixty (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 basis. However, if sub-classes of membership are created by the Declarant such assessments shall be fixed at uniform rates for all Living Units within any sub-class. Assessments may differ

between areas having different sub-classes of membership. Assessments with respect to a sub-class of membership shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to the sub-classes of memberships. Provided, however, that the assessment for Lots or Living Units owned by Declarant or any builder who has purchased an undeveloped lot for the primary purpose of constructing a Living Unit thereon, which Living Unit is not and has never been occupied as a residence shall be twenty-five percent (25%) of the regular assessments for Lots or Living Units.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

(a) The annual assessments provided for herein shall commence as to all Lots and Living Units in phase one on March 1, 1997. Thereafter, annual assessments shall commence as to all Lots and Living Units in each subsequent phase on the first day of the month following the conveyance of the first Lot in that respective phase from the Declarant to another Owner.

(b) 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 Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Living Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Living Unit is binding upon the corporation as of the date of issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. 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 Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. No owner may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the 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 the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to such 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. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

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 VIII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment the Community Common Properties. 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. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorney's fees. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

Section 2. Square Footage. Any Living Unit erected on a Lot shall contain a minimum enclosed dwelling area of 1,300 square feet for a single level dwelling and 1,500 for all Living Units of two or more levels. The term "enclosed dwelling area" as used herein shall mean the total enclosed area within a Living Unit subject to heating and cooling; provided that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. The Declarant or the Board of Directors may approve, in their discretion, in writing, a variance not in excess of twenty percent (20%) from the requirements set out in this section.

Section 3. Building Setbacks. No dwelling, including garages, shall be erected or maintained on any Lot outside of the building envelope as established by the zoning ordinance of the Town of Wake Forest as amended from time to time (hereinafter the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, eaves, carports and other

similar projections shall be deemed to be a part of the dwelling only to the extent that the same are deemed to be a part of the dwelling only to the extent that the same are deemed to be a part of the dwelling by the Zoning Ordinance. Any dwelling erected on a Lot other than a corner Lot shall face the street on which the Lot abuts. On corner Lots, a dwelling may be erected as to face either the street or the intersection of the two streets on which the Lot abuts.

Section 4. Use of Properties. No portion of the Properties (except for the temporary offices of the Declarant and other builders and/or model units used by the Declarant and other builders and construction materials, storage, equipment, signs and parking of Declarant and other builders) shall be used, except for residential purposes and for purposes incidental or accessory thereto.

Section 5. 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 6. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

Section 7. Obstructions, etc. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of Declarant or the Association. Provided, however, Declarant and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its powers and duties under this Declaration.

Section 8. Signs. No sign of any kind shall be displayed to the public view on any Lot except for signs which are allowed by the Wake Forest Town Code, and are approved by Declarant, and which are for one or more of the following purposes: (i) advertising the Lot for sale or rent, (ii) advertising the building contractor constructing improvements on the Lot during the initial construction and sales period, (iii) identifying the rental or sales office and/or model home of a building contractor who owns the Lot, (iv) identifying the subdivision or phase name and/or identifying the Lot number of a Lot; and (v) any other purpose approved by the Declarant (or by the Architectural Control Committee after the Class B membership terminates); provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Lot or on the Common Area, Landscaped Rights-of-Way, Roadway Medians and in any easements reserved or granted for such purposes, signs and billboards advertising the Property, the Properties or portions of either, or signs identifying various subdivisions or phases of the project, or regulatory, street and directional signs. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

Section 9. TV Antennas and Dishes. No satellite dishes of greater than one (1) meter in diameter shall be installed or permitted to remain on any of the Properties without the prior written approval of the Declarant, Board of Directors or Architectural Committee as provided in Article XII herein.

Section 10. Impervious Surface Area. No Lot shall have impervious surface area of greater than twenty-one percent (21%) of the total area of the Lot as long as such requirement is enforced by the Town of Wake Forest. The term, "impervious surface area" shall be defined

by and have the same meaning as set forth in the ordinances of the Town of Wake Forest and as amended from time to time.

Section 11. Lakes, Water Bodies and Wetlands. All lakes, ponds, and streams within the properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, swimming, motorized boating, playing, or use of personal flotation devices, shall be permitted. Other than those installed by the Declarant, no piers, docks or gazebos shall be constructed on any portion of lakes, streams, ponds, nor attached to the shoreline or banks thereof. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the properties.

ARTICLE IX

EASEMENTS

Section 1. Utility Easements. All of the Properties, including Lots, Living Units, 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 line and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Community Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties without approval of the membership as provided in the Articles of Incorporation.

Section 2. Easement for Lake and Related Maintenance. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not

the obligation, to enter upon the lake located upon the Properties in order to remove trash and other debris therefrom and fulfill maintenance responsibilities as elsewhere provided for in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and its members shall have an easement over and across the thirty foot drainage and utility easement near said lake, and an area marked, "50' Drainage Buffer and Private Greenway Access Easement," and an area marked, "20' Public Utility Easement and Public Access Easement," all three such areas as shown upon recorded Plats, for the purpose of providing pedestrian access to such lake and in order to provide for the maintenance and landscaping of the said easement areas and slopes and banks pertaining to such lake.

Section 3. 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 a building, or any other cause. There shall be valid easements for the maintenance of said encroachment, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of said Owner.

Section 4. Unintentional Encroachments. In the event that any Lot or Living Unit shall encroach upon any Community Common Properties or upon any other Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot or Living Units shall exist for the continuance and maintenance of such encroachment upon the Community Common Properties or other Lot or Living Units for so long as such encroachment shall naturally exist; and, in the event that any portion of the Community

Common Properties shall encroach upon any Lot or Living Unit, then an 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 naturally exist.

Section 5. Overhanging Roofs and Eaves. Each Lot and Living Unit within the Properties and the Owner thereof, is hereby declared to have an easement and the same is hereby granted by the Declarant, over each joining Lot and Living Unit and/or Community Common Properties, as the case may be, for overhanging roofs and eaves and the maintenance thereof.

Section 6. Priority 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 Lots, and the Community Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Properties or any portion thereof.

ARTICLE X

INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

- (a) Property damage insurance at one hundred percent (100%) of the current replacement cost of the Community Common Properties, excluding those areas that are normally excluded from coverage such as land, earthen dams, foundation, excavation, etc. The property damage policy must protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily

covered for similar types of projects, including those covered by the standard "all-risk" endorsement.

- (b) Public liability insurance covering all Community Common Properties and any other areas that are under the Association's control and supervision in an amount of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. All liability insurance shall contain cross liability endorsements to cover liability of the owners as a group to an individual owner.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably 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 Association for the benefit of the Association and the Owners.

ARTICLE XI

ELECTRICAL SERVICE

Declarant reserves the right to subject the Properties to a contract 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 by the Owner of each lot within the Properties.

ARTICLE XII

ARCHITECTURAL CONTROL AND INSPECTION

Section 1. General Provisions. No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, buildings, outbuildings,

fences, walls and other structures, shall be undertaken upon the Properties, unless plans and specifications therefore, 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.

This Article shall not apply to the activities of the Declarant, nor to the improvements to the Common Area by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No subsequent alteration or modification of improvements may be undertaken on any of the Properties which shall not be subject to the foregoing requirement, without prior review and express written approval by the Declarant, or the Board of Directors of the Association, (after such approval rights have been assigned to the Association), (the Declarant reserves the right to assign all or any portion of its approval rights to the Association at any time), or by an "Architectural Committee" composed of three (3) or more representatives appointed by the Board.

Refusal or approval of Plans, location, exterior color or finish, or specifications may be based by Declarant, Board of Directors or Architectural Committee, as the case may be, upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant, Board of Directors or Architectural Committee, as the case may be, shall seem sufficient.

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 therefore have been submitted and received, approval of the submitted items will be deemed granted, and the requirements of

this Article will be deemed to have been fully met; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant, Association, or Architectural Committee, as the case may be, if they contain inaccurate or erroneous information 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 undertaken, 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.

Section 2. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 3. Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Declarant, the Architectural Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of

mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

ARTICLE XIII

EXTERIOR MAINTENANCE

Section 1. Duty to Maintain. It shall be the duty of each Owner to properly maintain his Lot or his Living Unit or his Multiple-Family Lot and all improvements constructed on such Lot or his Living Unit or his Multiple-Family Lot.

Section 2. Remedies of Association. If, in the opinion of the Association, the owner of a Lot shall fail to maintain his Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep the improvements constructed thereon in a state of repair so as not to be unsightly, the Association in its discretion, by the affirmative vote of two-thirds (2/3) 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 improvements and perform such maintenance on such Lot as the removal of trash, cutting of grass, pruning of shrubbery, and seeding and correction of items of erosion control. The Association shall have an easement for

the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such costs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE XIV

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all persons subject to this Declaration, any Builder, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 2 ("Claims") shall be resolved using the procedures set forth in Section 3 in lieu of filing suit in any court.

Section 2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 3. The term "Governing Documents" is a collective term referring to this Declaration and any applicable supplemental Declaration, the Bylaws, the Articles of Incorporation, any architectural or design guidelines, and the use restrictions and rules, as they may be amended from time to time.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.3;

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XII (Architectural Control and Inspection) and Article VIII (Use Restrictions);

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

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by Section 4(a).

with the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.3.

Section 3. Mandatory Procedures.

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

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and

4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Wake County, North Carolina area.

3. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

Section 4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the

mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

Section 5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party fails to abide by the terms of any agreement or Award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XV

GENERAL PROVISIONS

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

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Duration and Amendments.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless the Association approves a change in the covenants and restrictions. The covenants and restrictions of this Declaration may be amended at any time if seventy-five percent (75%) of the vote of each class of members at a duly called meeting of the Association at which a quorum is present approves the change; 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.

No amendment shall become effective until submitted to and approved by the Wake Forest Town Attorney; provided, however, if the Wake Forest Town Attorney 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.

(b) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a government agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(c) No amendment which would change or delete any provision 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.

(d) As long as there is a Class B membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Community Common Property, and amendment of this Declaration.

Section 4. Availability of Documents. The Association will have current copies of the Declaration, By-Laws, and other rules concerning Fairlake Community Association as well as the Association's own books, records and financial statements available for inspection during normal business hours by owners and by holders, insurers and guarantors of first mortgages that are secured by living units in Fairlake Community Association.

Section 5. Rights of Eligible Mortgage Holders. Eligible Mortgage Holders are those holders of a first mortgage or deed of trust on a living unit ("Eligible Mortgages") who have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. Amendments of a material nature to this Declaration or the By-Laws of the Association require the approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the holders of Eligible Mortgages. Any action to terminate this Declaration or the legal status of the Association for reasons other than substantial destruction or condemnation of the Property, shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the holders of Eligible Mortgages.

The holder, insurer, or guarantor of a mortgage or deed of trust on any living unit in Fairlake Community Association is entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of Fairlake Community Association;

- (b) A lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; and
- (c) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. To obtain this information, the mortgage holder, insurer, or guarantor should send a written request to the Association, stating both its name and address and the unit number or address of the unit covered by its mortgage or deed of trust.

Section 6. Condemnation. If any part of the Community Common Property shall be taken (or conveyed in lieu of or under threat of condemnation) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceed shall be payable to the Association for the benefit of the Owners.

Section 7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 8. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 9. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lots or the Common Area.

Section 10. Conflict Between Declaration and Articles of Incorporation, Bylaws. Whenever there exists a conflict between the provisions of this Declaration and the Articles of Incorporation or Bylaws, the provisions of this Declaration shall control, and whenever there is

a conflict between the provisions of the Articles of Incorporation and Bylaws, the provisions of the Articles of Incorporation shall control.

Section 11. Laws of North Carolina. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

Section 12. Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any Supplemental Declaration.

Section 13. Notices of Town of Wake Forest. Any and all notices which are delivered to the Town of Wake Forest, its officers, employees and/or agents, including without limitation the Town Manager, Town Planning Director or Town Attorney shall be delivered in writing, certified mail, return receipt requested to the following address:

Town of Wake Forest
401 Elm Street
Wake Forest, North Carolina 27587
ATTN: Town Manager

with a copy to:

Wyrick, Robbins, Yates & Ponton, LLP
ATTN: Eric A. Vernon, Esq.
P.O. Drawer 17803
Raleigh, North Carolina 27619

THE REST OF THIS PAGE LEFT BLANK INTENTIONALLY.

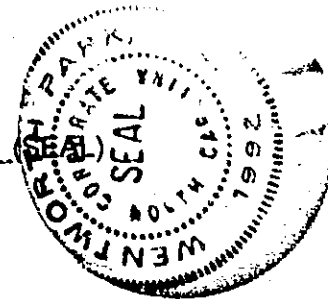
BK 7526PG0381

IN WITNESS WHEREOF, the undersigned, being the Declarant, Trustee and Lender have each caused this instrument to be executed as of the 25th day of June, 1997.

WENTWORTH PARK, INC.

By: [Signature]

President



ATTEST:

[Signature]
Secretary

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

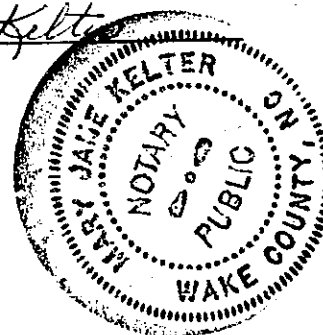
COUNTY OF WAKE

I, MARY JANE KELTER, a Notary Public of the County and State aforesaid, certify that DAN C. AUSTIN, Sr., personally came before me this day and acknowledged that he/she is Secretary/Assistant Secretary of Wentworth Park, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by DAN C. AUSTIN, Sr. as its Secretary/Assistant Secretary.

Witness my hand and official stamp or seal, this 25th day of June, 1997.

[Signature]
Notary Public

My commission expires: 4-7-2002



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Mary Jane Kelter

Notary(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.

LAURA M. RIDDICK, Register of Deeds

By

[Signature]
Asst./Deputy Register of Deeds

**Declaration of Covenants, Conditions and Restrictions
of Fairlake Community Association**

EXHIBIT A

All that certain tract or parcel of land lying and being in Wake Forest Township, Wake County, North Carolina, more particularly being all of that property shown and identified on that certain plat entitled "Fairlake Subdivision Phase I" prepared by Bass, Nixon & Kennedy, Inc. and recorded in Book 1997, Pages 1058-1059, Wake County Registry on June 24, 1997, reference to which is made for a more particular description of the same, and including Lots 1-25 and Lots 65-94 and such common areas and rights of way all as shown on the aforementioned plat maps, all subject to easements and restrictions of record.

EXHIBIT "B"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one (1) Party Appointed Arbitrator, and all the Respondents shall agree upon one (1) Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three (3) arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Community, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Community unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no posthearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.