

ARTICLES OF INCORPORATION OF THE
BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of Chapters 47F and 55A of the North Carolina General Statutes, the undersigned, a natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies as follows:

ARTICLE I
NAME

The name of the corporation is the **BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.** (hereinafter the "Association").

ARTICLE II
REGISTERED OFFICE AND INITIAL AGENT; PRINCIPAL OFFICE

The registered office of the Association is located at 1500 Sunday Drive, Suite 113, Raleigh (Wake County), North Carolina 27607. The name of the initial registered agent at such address is Donald F. Fraley, Sr.

The initial principal office of the Association is located at 1500 Sunday Drive, Suite 113, Raleigh (Wake County), North Carolina 27607. The location of the registered and the principal offices of the Corporation may be changed by a majority vote of the Board of Directors.

ARTICLE III
PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate a pecuniary gain or profit to the Members thereof. The specific purposes for which the Association is formed are to own and maintain the Common Area (as that term is defined in that certain Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Bexley At Weston Homeowners Association, Inc. (the "Association"), to be recorded in the Wake County Registry, as from time to time amended, said document, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration") within the subdivision known as BEXLEY AT WESTON (hereinafter the "Subdivision"), and for these purposes, to:

(a) exercise all powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, the Bylaws of the Association, and the North Carolina Planned Community Act, N.C.G.S. Chapter 47F (hereinafter the "Act"); and

(b) have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of North Carolina by law may now or hereafter have or exercise.

ARTICLE IV
FINANCE

The Association is a non-stock corporation and no part of the profits, if any, of the Association shall inure to the pecuniary benefit of its Members or any of them, or to any other person.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the 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 which is subject to assessment by the Association.

The voting rights of the Members shall be provided in the Declaration and Bylaws of the Association.

ARTICLE VI
MANAGEMENT OF THE ASSOCIATION

The affairs of the Association shall be managed by an initial Board of one (1) Director. The person who is to act in the capacity of Director until the selection of his successor(s) is:

<u>Name</u>	<u>Address</u>
Donald F. Fraley, Sr.	1500 Sunday Drive, Suite 113 Raleigh, North Carolina 27607

The election or appointment of Directors of the Association shall be governed by the Bylaws of the Association.

ARTICLE VII
DISSOLUTION

The Association may be dissolved only upon the signed written assent of Members entitled to at least 80% of the votes of the entire membership and at least three-fourths (3/4) of the votes appurtenant to each Class of Lots. Upon dissolution, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is not accepted, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to similar purposes. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within the subdivision and shall not be conveyed except to the Town of Chapel Hill or to another non-profit corporation organized for similar purposes.

ARTICLE VIII
DURATION

The period of existence of the Association is perpetual.

ARTICLE IX
AMENDMENTS

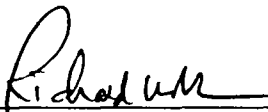
Amendment of these Articles shall require the assent of Members entitled to at least eighty percent (80%) of votes of the entire membership.

ARTICLE X
INCORPORATOR

The name and address of the incorporator is as follows:

Richard W. Moore 3716 National Drive, Suite 100
Raleigh, North Carolina 27612

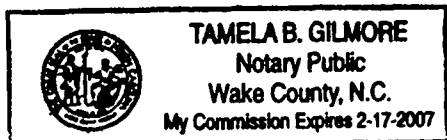
IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal, as of the day and year set forth below.


 _____ (Seal)
Richard W. Moore
Incorporator

STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, Tamela B. Gilmore, a Notary Public for said County and State, do hereby certify that Richard W. Moore personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 17th day of September, 2004.



 _____
Tamela B. Gilmore

**BYLAWS
OF THE
BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.**

CONTENTS

	<u>Page</u>
ARTICLE I - NAME AND LOCATION	1
ARTICLE II - DEFINITIONS	1
ARTICLE III - MEMBERSHIP AND VOTING RIGHTS	1
ARTICLE IV - MEETINGS OF MEMBERS	1
Section 1 - Annual Meetings	
Section 2 - Special Meetings	
Section 3 - Place of Meetings	2
Section 4 - Notice of Meetings	
Section 5 - Quorum	
Section 6 - Proxies	
Section 7 - Informal Action By Members	
ARTICLE V - BOARD OF DIRECTORS	3
Section 1 - General Powers	
Section 2 - Number, Term and Qualification	
Section 3 - Nomination	
Section 4 - Election	
Section 5 - Removal	4
Section 6 - Vacancies	
Section 7 - Compensation	
Section 8 - Declarant's Right to Appoint Directors	
ARTICLE VI - MEETINGS OF DIRECTORS	4
Section 1 - Regular Meetings	
Section 2 - Special Meetings	
Section 3 - Quorum	
Section 4 - Informal Action By Directors	
Section 5 - Chairman	5
ARTICLE VII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS	5
Section 1 - Powers	
Section 2 - Duties	6
Section 3 - Enforcement Rights	7

	<u>Page</u>
ARTICLE VIII - OFFICERS AND THEIR DUTIES	9
Section 1 - Enumeration of Offices	
Section 2 - Election of Officers	
Section 3 - Term	
Section 4 - Special Appointments	
Section 5 - Resignation and Removal	
Section 6 - Vacancies	
Section 7 - Multiple Offices	
Section 8 - Duties	
 ARTICLE IX - COMMITTEES	 10
 ARTICLE X - BOOKS AND RECORDS	 10
 ARTICLE XI - ASSESSMENTS	 10
 ARTICLE XII - MISCELLANEOUS	 10
Section 1 - Corporate Seal	
Section 2 - Amendments	11
Section 3 - Conflicts	
Section 4 - Indemnification	
Section 5 - Fiscal Year	13
Section 6 - Gender	

**BYLAWS
OF THE
BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I
NAME AND LOCATION

The name of the corporation is the **BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.** (hereinafter the "Association"). The principal office of the Association shall be located at 1500 Sunday Drive, Suite 113, Raleigh (Wake County), North Carolina 27607. The location of the principal office of the Association may be changed by the Board of Directors. Meetings of Members and directors may be held in such places within Wake County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

All terms defined in the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Bexley At Weston Homeowners Association, Inc., recorded, or to be recorded in office of the Register of Deeds of Wake County, North Carolina (as from time to time amended, said documents, together with all amendments thereto, if any, being hereinafter referred to as the Declaration"), shall have the same meanings when used herein.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Membership and voting rights of the Members shall be as provided in Article III of the Declaration.

ARTICLE IV
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within eighteen (18) months from the date of incorporation of the Association. Each subsequent regular annual meeting of the Members shall be held in the same month of each year thereafter on the day, at the hour, and at the place specified in the notice to the Members of the meeting.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or a majority of the members of the Board of Directors. Special meetings of the Members shall be called upon the written request of the Members entitled to one-tenth (1/10) of the votes appurtenant to the Class A Lots (as defined in Article III of the Declaration).

Section 3. Place of Meetings. Meetings of the Members shall be held at such place within Wake County, North Carolina, as may be determined by the Board of Directors.

Section 4. Notice of Meetings. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, to each Member entitled to vote at such meeting, by hand delivery or by mailing a copy of such notice, postage prepaid, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice shall be mailed or delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting. Such notice shall specify the place, day and hour of the meeting, contain an agenda of matters to be discussed and/or voted upon at the meeting, including without limitation, the nature of any proposed amendment to the Articles Of Incorporation or these Bylaws, any budget changes, any proposal to remove a director, and, if applicable, notice of Declarant's intent to appoint directors as provided in Section 8 of Article V of these Bylaws, and, in case of a special meeting, the exact purpose of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a Member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 5. Quorum. Except as otherwise provided in the Articles of Incorporation, the Declaration (including, specifically, Section 6 of Article V thereof) or these By-Laws, the presence at a meeting of Members or their proxies entitled to cast one-tenth (1/10) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum for any action. If, however, a quorum is not present or represented at any meeting, the Members or their proxies present and entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented.

Section 6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable by written notice of revocation signed by the person whose proxy is given and delivered to the Secretary of the Association prior to determination of a quorum at the meeting of Members. A Member's proxy shall be automatically revoked by and upon conveyance of such Member of his Lot. A proxy shall also automatically terminate on the earlier of the date specified in the proxy for termination or the date that is 11 months after its date.

Section 7. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the minute book of the Association, provided, however, that such consent shall only be valid of all persons who must sign such consent do so within forty-five (45) days after the first such person signs.

ARTICLE V
BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by a Board of Directors.

Section 2. Number, Term and Qualification. The number of directors of the Association shall be one (1) until the first annual meeting after the end of the Declarant Control Period (as defined in the Declaration), at which time the number of Directors shall be increased to three (3). At such meeting, the Members shall elect one Director to serve a term of one year, one Director to serve a term of two years, and one Directors to serve a term of three years.

At each annual meeting thereafter, the Members shall elect the number of directors needed to fill the vacancy or vacancies created by the Director(s) whose term(s) is(are) expiring, to serve for a term of three years (except in the case of the initial election of a Director, in which case the term of that Director may be shortened to provide for the staggering set forth in this Article, or in the case of the filling of a vacancy, in which case the Director elected to fill the vacancy shall be elected for the unexpired term of the Director whose vacancy is being filled).

The term of office of the Directors shall be staggered so that, except for an election to fill a vacancy or to fill a newly- created directorship, the terms of not less than one (1) nor more than three (3) Directors shall expire at each annual meeting. Each Director shall hold office until the earlier of the end of his term, or his death, resignation, retirement, removal or disqualification. Directors need not be Members of the Association.

The Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the number of directors of the Association, provided, however, that the number of directors shall not be increased to more than nine (9) or decreased to less than three (3) without amendment of these Bylaws of the Association.

Section 3. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee appointed by the Board of Directors; nominations may also be made by any Member at the annual meeting of the Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 4. Election. Except as provided in Sections 6 and 8 of this Article, the directors shall be elected at the annual meeting of the Members by secret written ballot. In such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as

they are entitled under the provisions of Article III of the Declaration. The person(s) receiving the highest number of votes shall be elected. Neither cumulative nor fractional voting is permitted.

Section 5. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members present and entitled to vote at any meeting of the Members called for that purpose, provided, however, that the Members may not remove a director appointed by the Declarant as provided in Section 8 of this Article V.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by the selection by the remaining directors of a successor, who shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 8. Declarant's Right to Appoint Directors. Notwithstanding any other provision of these Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually, without notice, and at such place and hour as may be fixed from time to time by resolution of the Board. Should the date of such meeting fall on a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if written consent to the action so taken is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the President, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the Members and their guests thereon and establishing penalties for infractions thereof, and adopt and publish rules and regulations interpreting the restrictions and covenants applicable to the Properties and the enforcement thereof;

(b) after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of 30 days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Articles Of Incorporation, these Bylaws, the Declaration or the Act, including, without limitation, Section 47F-3-102 thereof, and not reserved to the Members by other provisions of the same;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without good cause;

(e) employ a manager and such other employees or independent contractors as it deems necessary and prescribe their duties, and contract with a management company to manage the operation of the Association. In the event that a contract is entered into with a management company, such contract must be terminable by the Board of Directors without cause or penalty on not more than ninety (90) days' notice and any management contract made with the Declarant shall be for a period not to exceed three years;

(f) employ attorneys, accountants and other persons or firms to represent the Association when deemed necessary;

(g) grant easements to any private or public agency, authority or utility for the installation and maintenance of sewage, utility (including CATV) or drainage facilities upon, over, under and across the property owned by the Association without the assent of the Members when such easements are necessary for the convenient use and enjoyment of the Properties; and

(h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

The Board of Directors may, in its discretion, delegate any of its powers to a subcommittee of the Board, an officer of the Association, or a manager, agent or attorney employed by the Association, provided, however, that such delegation shall not relieve the Board of its obligation to ensure that the duties set forth in this Article VII are faithfully carried out or that the powers so delegated are appropriately exercised by such delegate.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing at least five (5) working days before such meeting by Members entitled to at least one-fourth (1/4) of the votes appurtenant to the Class A Lots;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

- (1) fix the amount of the annual assessment against each Lot at least twenty (20) days before January 1 of each year;
- (2) send written notice of such assessment to every Owner subject thereto at least ten (10) days before January 1 of each year; and
- (3) establish and enforce procedures for collection of assessments and for filing and enforcement of liens for unpaid dues as provided in the Act.

(d) issue, or cause an appropriate officer of the Association to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be established by the Board of Directors for the issuance of such certificate. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment;

(e) procure and maintain adequate liability insurance covering the Association in an amount not less than \$1,000,000.00 and adequate hazard insurance on the real and personal property owned by the Association;

(f) procure and maintain directors' and officers' liability insurance;

(g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(h) cause the Common Area and all facilities erected thereon to be maintained;

(i) if it deems necessary or if directed by the Members to do so, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of the improvements constructed on the Common Area;

(j) provide such notices to and obtain such consents from the owners and holders of first deeds of trust on Lots within the Properties as is required by the Declaration or these Bylaws;

(k) pay all ad valorem taxes and public assessments levied against the real and personal property owned in fee by the Association;

(l) hold annual and special meetings and elections for the Board of Directors;
and

(m) prepare annual budgets and financial statements for the Association and make same available for inspection by the Members at all reasonable times.

Section 3. Enforcement Rights. In addition to such other rights as are granted in the Act, the Articles of Incorporation, the Declaration or these Bylaws, the Board of Directors shall have the power, pursuant to the procedures set forth in this Section, to impose sanctions for violations by an Owner, a member of his family, or any occupant, tenant, employee, guest or invitee of the Owner, of the Declaration, these Bylaws, rules and regulations adopted Association or the Restrictive Covenants applicable to the Properties (hereinafter individually and collectively referred to as the "Rules"), which sanctions may include, but are not limited to, reasonable monetary fines, not to exceed the greater of the costs actually incurred by the Association in abating such violation including, without limitation, attorney's fees, or \$50.00 per day, or part thereof, in which the violation continues to exist for a first violation, \$100.00 per day for a second violation of the same rules or regulations, and \$150.00 per day for a third or subsequent violation, and which fines shall constitute a lien upon the Lot of the Owner, and suspension of the right to vote and the right to use the Recreational Amenities. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Lot if the Owner is delinquent in paying any assessment or other charges owed to the Association. The failure of the Board to enforce any of the Rules shall not be deemed a waiver of the right to do so thereafter.

(a) Notice. Before imposition of any sanction, the Board or its delegate shall give the Owner written notice describing: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than 10 days within which the Owner may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received by the Board before the end of the period set forth in such notice (the "Notice Period"). Such notice may be hand delivered by any person or sent by first class mail. Any notice hand delivered shall be deemed received when received by the Owner or by any person more than 18-years old who is present at

the address of the Owner as shown on the records of the Association. Notice sent by first class mail shall be deemed received on the third business day after same is deposited in the United States Mail, addressed the address of the Owner on the Association's records, and with proper postage thereon. The Board shall include in its minutes evidence of the giving of such notice, including a copy of the notice and a statement of the date and manner of delivery signed by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting, unless the appearance is made to protest the lack of notice.

If a request for a hearing is not received before the end of the Notice Period, the sanction stated in the notice shall be imposed; provided, however, that the Board may waive any proposed sanction if the violation is cured before the end of the Notice Period. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

(b) Hearing. If a hearing is timely requested, the hearing shall be held by the Board in executive session or by a committee of not less than three (3) Members (who may or may not be Directors of the Association) appointed by the Board for the purpose of hearing such appeals. The Owner shall be afforded a reasonable opportunity to be heard. A written statement of the results of the hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board and a copy of such statement shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section 3.

If the hearing was held before a subcommittee appointed by the Board, the Owner shall have the right to appeal the decision to the Board by giving a written notice of appeal to the President or Secretary of the Association within ten (10) days after receiving a copy of the written statement of the results of the hearing. If such notice of appeal is given, the Board shall schedule and notify the Owner of the date of the appeal hearing, which shall be not less than five (5) nor more than fifteen (15) days after notice of appeal is given, and which must be attended by not less than 75% of the members of the Board. The Owner shall be afforded a reasonable opportunity to be heard. The Board may, by majority vote of the Directors present at such appeal hearing, affirm, modify or reverse the decision of the subcommittee. A written statement of the results of the appeal hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board and a copy of same shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section 3.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Rules, without the necessity of compliance with the notice and hearing procedures set forth herein, by self-help methods (specifically including, but not limited to, the towing of Owner and tenant vehicles parked in violation of parking rules) or by action at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Association shall be entitled to recover all costs or such action, including reasonable attorney's fees incurred. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President, who shall at all times be a member of the Board of Directors, a Secretary, a Treasurer, and such Vice President(s) and other officers as the Board may from time to time by resolution appoint.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by the Board. The person appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of President and Secretary may not be held by the same person. Otherwise a person may simultaneously hold more than one office in the Association.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The President shall: preside at all meetings of the Board of Directors and of the Members; see that orders and resolutions of the Board are carried out; sign all leases, promissory notes, mortgages, deeds and other written instruments; and, if so authorized by the Board, sign checks.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall: record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the

Association and affix it on all papers requiring a seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association and their addresses; and perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall: receive and deposit in appropriate bank accounts all funds of the Association and disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; issue, or cause to be issued, all requested certificates setting forth whether the assessments applicable to a specific Lot have been paid; cause an annual audit of the Association books to be made by an independent public accountant at the completion of each fiscal year; prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members; and, if directed by resolution of the Board of Directors, sign checks of the Association.

ARTICLE IX COMMITTEES

The Board of Directors of the Association shall appoint a Nominating Committee as provided in Section 3 of Article V of these Bylaws. The Board of Directors may appoint such other committees as it deems necessary to carry out the affairs of the Association.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member or his agent. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI ASSESSMENTS

As more fully provided in Article V of the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made.

ARTICLE XII MISCELLANEOUS

Section 1. Corporate Seal. The Association shall have a seal in a circular form having within its circumference the words: Bexley At Weston Homeowners Association, Inc.; and such seal is hereby adopted as the corporate seal of the Association.

Section 2. Amendments. Except as otherwise provided herein, these Bylaws may be amended or repealed and new bylaws adopted at any regular or special meeting of the Board of Directors by the affirmative vote of a majority of the directors then holding office.

These Bylaws may also be amended or repealed and new by-laws adopted at any regular or special meeting of the Members, by the affirmative vote of two-thirds of the votes cast at such meeting, subject to normal quorum requirements.

No bylaw adopted or amended by the Members shall be amended or repealed by the Board of Directors, except to such extent that such bylaw expressly authorizes its amendment or repeal by the Board of Directors.

Section 3. Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 4. Indemnification.

(a) Any person who at any time is serving or has served as a director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan, shall be indemnified by the Association to the fullest extent permitted by law, including specifically the indemnification provided by the provisions of the North Carolina Nonprofit Corporation Act, including but not limited to indemnification against (i) reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (ii) reasonable payments made by him in satisfaction of any judgment, money decree, fine penalty or settlement for which he may become liable in any such action, suit or proceeding.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by the provisions of this Section 4(a), including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and if required, giving notice to, and obtaining approval by, the Members of the Association.

Any person who at any time serves or has served in any of the aforesaid capacities for, on behalf of, or at the request of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided under this Section 4(a). Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Section.

If the North Carolina Nonprofit Corporation Act is subsequently amended to eliminate or further limit the personal liability of directors or to authorize corporate action to eliminate or further limit such liability, then the liability of the directors of this Association shall, without any further action of the Board of Directors or the Members of the Association, be eliminated or limited to the fullest extent permitted by the North Carolina Nonprofit Corporation Act as so amended.

(b) The Association shall have the power to purchase and maintain insurance on behalf of any person who is serving or has served as a director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would otherwise have the power to indemnify him against such liability.

(c) In addition to the indemnification authorized under the provisions of Sections 4(a) and 4(b) of this Article XII and under the provision of the North Carolina Nonprofit Corporation Act, the Association, acting pursuant to a resolution adopted by its Board of Directors, may by contract agree to indemnify any person who at any time is serving or has served as a director, officer, employee or agent of the Association, or in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprises or, at the request of the Association, as a trustee or administrator under any employee benefit plan, against liability and reasonable litigation expenses, including attorneys' fees, arising out of his status as such or his activities in any of the foregoing capacities before or after the date on which the contract is executed; PROVIDED HOWEVER, that the Association may not agree under any such contract to indemnify any such person against any liability or litigation expense he may incur in relation to matters as to which he shall have been adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason or willful misconduct in the performance of duty.

(d) Any repeal or modification of the foregoing provisions of this Section 4 shall not affect any rights or obligations then existing with respect to any state of facts then or therefore or thereafter brought based in whole or in part on any such state of facts.

(e) This Section is intended to provide indemnification solely for actions taken by a person in his/her capacity as an officer or director of the Association. Nothing herein shall be deemed to provide indemnification to any person for any liability that may result from that person's ownership of property within the Properties.

Section 5. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 6. Gender. Any use of the masculine gender in these Bylaws shall be construed to include the feminine gender. Any use of the singular shall be construed, as appropriate, to include the plural.

The undersigned hereby certifies that he is the Secretary of the Bexley At Weston Homeowners Association, Inc. (the "Association"), and that the foregoing Bylaws Of The Bexley At Weston Homeowners Association, Inc., have been duly adopted as the Bylaws of the Association as of the 2nd day of May, 2005

Jim Cox, Secretary

BK011340PG00717

WAKE COUNTY, NC 201
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/02/2005 AT 10:53:19

BOOK:011340 PAGE:00717 - 00726

Drawn by & HOLD FOR: MOORE & ALPHIN, PLLC (Box 155) (rm)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

RESTRICTIVE COVENANTS
FOR
BEXLEY AT WESTON

MI HOMES OF RALEIGH, LLC, a Delaware limited liability company (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. DEFINITIONS. All terms defined in the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Bexley At Weston, recorded in office of the Register of Deeds of Wake County, North Carolina (as from time to time amended, said documents, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration"), shall have the same meanings when used herein.

2. LAND USE AND BUILDING TYPE. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the Town of Cary, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant and its agents and employees shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Subdivision and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not more than three (3) cars, and out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street.

BK011340PG00718

3. DWELLING SIZE. The minimum heated square footage of a dwelling may not be less than 1,800 square feet for a one-story dwelling and 1,100 square feet on the first floor of a two-story or two and one-half story dwelling.

4. BUILDING SETBACKS; HOUSE LOCATION. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Subdivision or as otherwise required or permitted by the zoning ordinance of the Town of Cary (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. 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 so as to face the intersection of the two streets on which the Lot abuts.

5. FENCES. No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration. Only two types of fences will be allowed in the Subdivision, and Declarant will provide to each Owner a description or depiction of the type of fences that will be approved.

Furthermore: (i) there can be no fence in the back yard of Lots along Weston Pointe (Lots 7, 8, 9 and 10), and (ii) fences along the rear of Lots abutting Norwell Boulevard (i.e., Lots 1, 2, 3, 6, 7, 29, 30, 31, 32 and 35) and fences in the rear of Lots 19, 20, 21 and 22 may only be a 5' black vinyl fence. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision, and no Owner or other person or entity may remove any fence installed by the Declarant without the prior written approval of the Declarant or, after the expiration of the Declarant Control Period, the Association.

6. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7. PARKING; DRIVEWAYS AND PARKING PADS; ABANDONED VEHICLES. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), recreational vehicles, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any Lot or any street within the Subdivision. No boat or boat trailer shall be parked on any Lot or any street within the Subdivision. A boat and boat trailer may be parked or kept on a Lot only if it is parked or kept in an enclosed garage.

BK011340PG00719

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

8. 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.

9. NUISANCES; BUSINESS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted. No business trade or activity may be conducted on any Lot unless permitted by the Cary Board of Adjustments.

10. SIGNS. Except as otherwise required by the Town of Cary, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

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

To the extent that the reception of an acceptable signal would not be impaired, an antenna, dish or receiver permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) it is integrated with the Dwelling and surrounding landscape; (iv) if a dish or other receiver, is not larger than 36" in diameter; and (v) is approved pursuant to Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

BK011340PG00720

12. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of a Lot. An in-ground swimming pool is permitted, provided that: (i) it is approved by the Town of Cary; (ii) it is completely surrounded by an approved fence; and (iii) the pool, fence and other facilities have been approved in writing pursuant to Article VIII of the Declaration prior to obtaining a building permit for same. In view of governmental regulations concerning impervious surfaces, Declarant cannot and does not make any representation as to whether an in-ground swimming may be installed on any of the Lots.

13. MAILBOXES. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article VIII of the Declaration.

14. MAINTENANCE OF LOT; CONSTRUCTION. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling, which mains furnish domestic water from sources beyond the boundaries of the Lot.

BK011340PG00721

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by the Town of Cary.

18. EXTERIOR MAINTENANCE. The Owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

19. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer, storm water drainage, and reclaimed water facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the Owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

Easements are also reserved for the benefit of the Declarant, the Weston At Bexley Homeowners Association, Inc. (the Association"), and the Town of Cary, and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the maps referred to in Exhibit A as "20' Drainage Easement", "Drainage Easement", and any variation or abbreviation thereof (regardless of size), for the purpose of installing, operating and maintaining storm water drainage facilities thereon. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant, the Association or the Town, unless approved as provided in Article VIII of the Declaration and, if required, by the Town.

Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Lots 1 and 33 shown and designated as "20' Landscape & Maintenance Easement" on the maps referred to in Exhibit A for the purpose of grading and landscaping the easement area, including, without limitation, installing, operating, repairing and maintaining subdivision entrance signage, landscaping and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by the Town.

BK011340PG00722

Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of the various Lots within the Subdivision shown and designated as "Variable Width Sidewalk & Drainage Easement" on the maps referred to in Exhibit A for the purpose of installing, repairing and maintaining sidewalks in the easement area. No sidewalk, building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by the Town.

Certain areas of Lots 34, 35, 39, 40, 41, 53, 54, 55 and 56 contain areas designated as "Sight Distance Easement". No person or entity may install or construct any vegetation, fence or any other structure or thing within such easement areas in such a manner as to interfere with the view of traffic on Juliete Circle or in violation of any ordinance or regulation of the Town of Cary. Easements are reserved for the benefit of the Declarant, the Association and the Town of Cary, and their respective successors and assigns, over, across and under those portions of those Lots for the purpose of removing anything installed, constructed or planted in violation of this paragraph.

Furthermore, Lots 7, 8, 9 and 10 are subject to an undisturbed buffer running from the rear line of each Lot to a line parallel to and 20' inside of the rear line of each Lot. No person or entity may construct or place any object in or remove any vegetation from such buffer area.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

20. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

21. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article VIII of the Declaration, may, but shall not be obligated to, waive in writing a violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Wake County Registry.

23. STREET LIGHTING. Declarant reserves the right to subject the Subdivision to a contract with Progress Energy for installation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer.

BK011340PG00723

24. ENFORCEMENT; FINES. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may be enforced any Owner or by the Association pursuant to the Declaration and the Bylaws of the Association.

As more fully provided in the Declaration and Bylaws, the Board of Directors of the Association shall have the right and authority to levy fines or penalties for the violation of any provision of these Covenants and/or the rules and regulations hereafter promulgated by the Association. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

25. SEVERABILITY. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

26. TERM. These covenants shall run and bind the land and all Owners thereof for a period of 25 years from the date they are recorded, after which time, they shall be automatically extended for successive periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the Declarant control Period by the Declarant, without the approval or joinder of the Members or any other person. These covenants may also be amended during the first twenty-five year period by an instrument signed by the then-Owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-Owners of not less than seventy-five percent (75%) of the Lots.

27. BEXLEY AT WESTON HOMEOWNERS ASSOCIATION, INC.; MASTER DECLARATION. The Owners of Lots within the Subdivision are Members of the Bexley At Weston Homeowners Association, Inc., and are subject to and bound by the Declaration, which provides additional restrictions on such Lots. The Lots and the Owners of Lots within the Subdivision are also subject to the Master Declaration (defined in the Declaration), which provides additional restrictions on the Lots.

28. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the Town of Cary. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

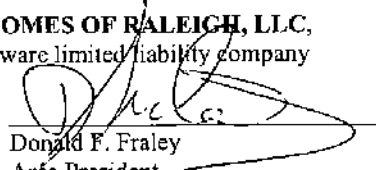
[Signature on following page]

BK011340PG00724

IN WITNESS WHEREOF, Declarant caused this instrument to be executed by its duly authorized officer, as of the date set forth in the notary acknowledgment below.

M/I HOMES OF RALEIGH, LLC,
a Delaware limited liability company

By:


Donald F. Fraley
Area President

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for said County and State, certify that DONALD F. FRALEY personally appeared before me this day and acknowledged that he is a Area President of **M/I Homes of Raleigh, LLC**, a Delaware limited liability company, and that he, as Area President, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this the 28th day of April, 2005.




Notary Public

My commission expires: 6/17/09

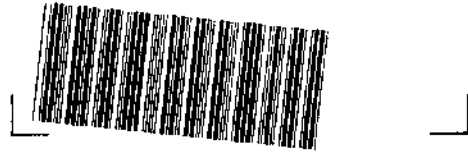
BK011340PG00725

EXHIBIT A

BEXLEY AT WESTON

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

All of the real property shown and described on those certain maps entitled "BEXLEY AT WESTON, LOTS 1-64, FORMERLY WESTON, SF-4", recorded in Book of Maps 2005, Pages 625-627, inclusive, Wake County Registry, SAVING AND EXCEPTING THEREFROM the Common Area (as defined in the Declaration) and the rights-of-way of the public streets shown thereon.



BOOK:011340 PAGE:00717 - 00726

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



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

North Carolina -- Wake County

The foregoing certificate ___ of Richard W. Moore

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

Laura M. Riddick, Register of Deeds

By: [Signature]
~~Assistant~~/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
10 # of Pages

Prepared by: Vinson & Elkins, Houston, Texas
Return to: Alan H. Peterson, P.O. Box 10096, Raleigh, N.C. 27605

Reference is hereby made to an
instrument recorded in Book
3975 Page 850

BOOK 3693 PAGE 456

PRESENTED
FOR
REGISTRATION

APR 7 11 22 AM '85

KENNETH O. WILKINS
REGISTER OF DEEDS
WAKE COUNTY, NC

assigning this Deed of Trust 4/6/86

WESTON

DECLARATION OF MASTER PROTECTIVE COVENANTS

THIS DECLARATION of MASTER PROTECTIVE COVENANTS made
this 2nd day of APRIL, 1986 by NORTH HILLS
PROPERTIES, INC., a North Carolina corporation,
("Declarant");

W I T N E S S E T H:

ARTICLE I

Declaration

1.01. General. Declarant is the owner of that certain 975.219 acre, more or less, tract of land situated in Wake County, North Carolina, more particularly described on Exhibit "A" attached hereto and known as "WESTON." At the time of the recording of this Declaration, WESTON is substantially undeveloped. It is the intention of Declarant to create within WESTON a first class, high quality, multi-use development. In order to accomplish this, Declarant has determined to establish suitable standards and procedures to assure that WESTON will be developed in a first class, high quality, permanent, orderly, environmentally sound and aesthetically pleasing manner; to assure that the improvements constructed within WESTON are soundly designed and constructed, are visually compatible with other improvements and are harmonious with the natural surroundings; to assure that the property within WESTON will not be used in a manner which is unlawful or inappropriate for the well being of the development of WESTON; and to assure that there will be adequate and well maintained landscaped areas, parks, greenbelts, parking areas, pedestrian ways, streets, roads and other common areas, as well as adequate telecommunications and utility systems and easements, and such other systems and facilities as may be reasonably necessary or desirable to create, protect and enhance the value of WESTON over an extended period of time. The purpose of this Declaration is to achieve the aforesaid objectives. The intention of Declarant is that this Declaration be liberally and broadly construed so as to effectuate such purpose.

1.02. Declaration. Declarant hereby establishes, adopts and declares that the Development is and shall be subject

GSG42-a
3/7/86

to, and that all land and Improvements within the Development shall be acquired, held, owned, encumbered, used, managed, leased, occupied, enjoyed and transferred subject to, the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, repurchase options, rights of first refusal, terms and provisions hereinafter set forth, all of which shall be covenants running with the title to land within the Development, and shall be personal covenants and obligations of and shall inure to the benefit of each Owner. Each contract of sale, option, deed, deed of trust, lease, sublease, concession, franchise, license, easement or other instrument which may hereafter be executed with respect to any land and Improvements within the Development shall be deemed to have been executed, delivered and accepted subject to this Declaration and to have incorporated this Declaration by reference therein, regardless of whether any such instrument specifically incorporates this Declaration by reference therein.

1.03. Additions and Deletions. Declarant (prior to the Conversion Date) and the Association (upon and after the Conversion Date) shall have, and Declarant for itself and the Association hereby reserves, the exclusive unrestricted and unconditional right to add property to or delete property from this Declaration. Property so added or deleted need not be contiguous to property subject to this Declaration. Such addition or deletion shall be accomplished by the execution of a Supplemental Declaration identifying the property to be added or deleted and the recordation of such Supplemental Declaration in the appropriate public records. More than one Supplemental Declaration may be executed and recorded. Upon the recordation of a Supplemental Declaration adding property to or deleting property from this Declaration, the property so added or deleted shall become or cease to be (as the case may be) acquired, held, owned, encumbered, used, managed, leased, occupied, enjoyed and transferred subject to the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, purchase options, rights of first refusal, terms and provisions herein set forth and a part of the Development for all purposes hereunder. Any Supplemental Declaration shall incorporate by reference this original Declaration, together with all prior supplements hereto. In addition, as to any Supplemental Declaration which adds property to this Declaration, Declarant or the Association may include such

additional or different covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, rights, terms and provisions as Declarant or the Association, in its sole discretion, may determine.

ARTICLE II

Definitions

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

- (a) "Act" shall mean the North Carolina Nonprofit Corporation Act, as from time to time amended.
- (b) "Affiliated Person" shall mean any Person who or which controls, is controlled by or is under common control with Declarant, the Association or any Owner. "Control" shall be deemed to exist where the Person (i) is an executive officer, director or general partner of Declarant, the Association or any Owner, (ii) has contributed more than twenty-five percent to the capital of Declarant, the Association or any Owner, (iii) is entitled to cast or direct the casting of, on matters which by law all holders of voting rights are entitled to vote, at least twenty-five percent of the votes therein or (iv) otherwise possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of Declarant, the Association or any Owner, whether through the ownership of voting securities, by contract or otherwise.
- (c) "Approved Plans" shall mean the final working drawings, plans, specifications and other documentation and materials as the Committee may require with respect thereto for any Improvements which have been approved by the Committee at the conclusion of the Construction Documentation Phase and have been initialed by a duly authorized representative of the Committee and of the Owner to evidence the final, binding nature thereof.
- (d) "Assessments" shall mean the Regular Group Assessments, the Special Group Assessments and the Special Individual Assessments levied from time to

time by the Association in accordance with, and as more fully described in, Sections 8.03, 8.04 and 8.05 hereof.

- (e) "Association" shall mean the Weston Property Owners' Association, a North Carolina nonprofit corporation formed pursuant to the Act, and its successors and assigns including entities into or with which the named corporation, or its successors and assigns, may merge or be consolidated. "Residential Association" shall have the meaning ascribed to it in Section 3.09 hereof.
- (f) "Association's Lien" shall mean the first and prior lien on each Building Site established and assigned to the Association to secure sums due the Association pursuant to Section 8.08 hereof and subordinated pursuant to Section 8.09 hereof.
- (g) "Board" shall mean the Board of Directors of the Association.
- (h) "Building Site" shall mean a tract or parcel of land within the Development which has been designated by Declarant as a site on portions of which private building may occur (whether for office, institutional, industrial, residential or other private purposes, as distinguished from Common Area purposes).
- (i) "Committee" shall mean the Architectural Control Committee of the Association.
- (j) "Committee Member" shall mean a member of any committee of the Association. A Committee Member may but need not be (i) an Owner, (ii) an officer, director, shareholder, partner, beneficiary or employee of an Owner, Declarant or the Association or (iii) another Affiliated Person.
- (k) "Common Areas" shall mean those areas, and all improvements located under, on or above those areas, within the Development which are designated from time to time by Declarant in such manner as Declarant deems appropriate for use for

recreational and general welfare purposes by all, or specific groups or categories of, Owners.

- (l) "Conversion Date" shall mean the date Declarant elects to convert its Class B Membership in the Association to a Class A Membership, the timing of which election shall be at the sole discretion of Declarant.
- (m) "Declarant" shall mean North Hills Properties, Inc., a North Carolina corporation, being the owner of the Development, and its successors and assigns.
- (n) "Declaration" shall mean this Declaration of Master Protective Covenants as from time to time amended and supplemented pursuant to the provisions hereof.
- (o) "Development" shall mean the land and the Improvements as to which this Declaration from time to time applies, which currently is the land described on Exhibit "A" attached hereto.
- (p) "Development Standards" shall mean those development plans and design standards from time to time adopted by Declarant as applicable to the Development.
- (q) "Governing Documents" shall mean this Declaration, the Development Standards, the Articles of Incorporation and ByLaws of the Association as from time to time in effect and, as applicable, the rules and regulations from time to time in effect pursuant to Section 5.02 hereof.
- (r) "Governmental Authority" shall mean any court, board, agency, commission, office or authority of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
- (s) "Improvement" shall mean any structure or other improvement of any kind, whether below, at or above grade, located anywhere in the Development, including but not limited to office buildings,

commercial facilities, light industrial facilities, research and development facilities, warehouse facilities, single family residences, duplexes and fourplexes, apartment units, condominiums, garages and other parking facilities, refuse collection containers or facilities, utility installations, storage tanks and other facilities, cables, conduits, wiring, towers, masts, antenna, microwave dishes, heliports, loading facilities, walkways, driveways, fences, berms, landscaping, sculptures and other works of art, fountains, lighting standards and fixtures, swimming pools, ponds and other water systems, tennis courts, other recreational facilities, site grading and other artificial earth movement. "Non-Residential Improvement" shall mean any Improvement other than a Residential Improvement. "Residential Improvement" shall mean any Improvement which is (i) designed to house a single family and (ii) constructed on a single lot. "Residential Improvements" shall thus include single family houses, townhouses and, provided that no more than one living unit is constructed per lot, condominiums. "Residential Improvements" shall not include duplexes, fourplexes, apartments or vertical condominium or cooperative projects.

- (t) "Legal Requirements" shall mean any and all (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, requirements, permits, certificates or ordinances of any Governmental Authority, insurance underwriter or utility company in any way applicable to any Owner or such Owner's Building Site, including but not limited to any of the aforesaid pertaining to maintenance, operation, use, insurance, zoning, environmental and utility matters and (ii) the Governing Documents.
- (u) "Member" shall mean a member of the Association, and shall be either a Class A Member or a Class B Member. "Class A Member" and "Class B Member" shall have the meanings ascribed to them in Section 3.03 hereof.

- (v) "Occupant" shall mean a tenant, subtenant, concessionaire, franchisee, licensee or other person who occupies, uses or otherwise conducts any business or other activity from, or has the right to occupy, use or otherwise conduct any business or other activity from, any Building Site or Improvement.
- (w) "Owner" shall mean the record owner, whether one or more, of the fee simple title to a Building Site or, if the Building Site is subject to a ground lease, the ground lessee, whether one or more, of the Building Site. Notwithstanding any legal theory (of mortgage or otherwise), no holder of a deed of trust or mortgage on any Building Site, or of any security interest with respect thereto, shall be deemed an "Owner" hereunder unless and until the holder has acquired title to the fee of the Building Site or the leasehold estate of the ground lessee thereof.
- (x) "Person" shall mean any natural person, trust, corporation, association, partnership, joint venture or other legal entity, public or private.
- (y) "Record Date" shall mean (i) such date as the Association may, from time to time, set for the purpose of determining which Owners shall be liable for a Regular Group Assessment or a Special Group Assessment or (ii) upon the failure of the Association to set a specific date for the determination referred to in clause (i) hereof, on the date the annual budget (in the case of Regular Group Assessments) or the specific expenditures (in the case of Special Group Assessments) are adopted or approved by the Board.
- (z) "Variance" shall mean any approval granted by the Association to any Owner for a deviation or noncompliance with this Declaration or the Development Standards, which approval has been duly executed by the Chairman of the Committee.

ARTICLE III

Association

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

Association's rights, remedies, recourses, duties or responsibilities hereunder.

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

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

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

Prior to the Conversion Date,

- (a) Class A Members shall not be entitled to vote on any matter relating to the Governing Documents other than proposed amendments to or the termination of this Declaration, as to which a Class A Member in good standing may be entitled to vote pursuant to Section 11.02 hereof, and

- (b) Class B Members shall be entitled to vote on all matters relating to the Governing Documents on the basis of one vote for each acre, and/or a fractional vote for each fractional acre (expressed in terms of one-one-hundredth of an acre), in each Building Site it owns.

Upon and after the Conversion Date, each Class A Member in good standing shall be entitled to vote on all matters presented to the Association for a vote, on the basis of one vote for each acre, and/or a fractional vote for each fractional acre (expressed in terms of one-one-hundredth of an acre), in each Building Site it owns. Where more than one Person owns an interest in a Building Site, all Persons collectively shall be a single Member, and shall cast their entitled vote in such manner as they may determine between or among themselves; provided, however, that, with respect to any Building Site, in no circumstance may more than one vote be cast with respect to each acre therein. For purposes of this Declaration, a "Member in good standing" shall mean an Owner which has, not less than seven days prior to the date established by the Association for the casting of votes, fully paid all sums due by it to the Association, and fully performed all of its other obligations as set forth in the Governing Documents. The Board shall have the sole responsibility and authority for determining whether a Member has good standing status, and shall make such determination with respect to all Members prior to a vote being taken by the Association on any matter on which Class A Members are entitled to vote. If the Board determines that adequate extenuating circumstances exist, the Board may, in its sole discretion, waive the seven day requirement set forth above and require only that such payment and performance be made at any time before the vote is cast. Any Member which is determined to be not in good standing shall, for so long as such status shall continue, be disqualified from voting on any matters presented to the Members. Other than with respect to legitimate proxies, no Member may, directly or indirectly, assign to or otherwise vest in any other person the right or power to cast, or direct the casting of, any vote of such Member with respect to the Association or this Declaration.

3.04. Quorum; Voting and Notices. Members holding one-half of the votes entitled to be cast on any matter to be presented to the Association for a vote shall constitute a quorum for voting. Only Members in good standing shall be

entitled to vote; accordingly, for the purpose of determining the votes entitled to be cast, the voting membership shall be decreased by the number of Members who are not Members in good standing as of the date such determination is being made and the total potential votes shall be decreased by the number of votes which the Members not in good standing would otherwise have been entitled to cast. The vote of the majority of those votes entitled to be cast, either present or voting by legitimate proxy at a duly called meeting at which a quorum of Members are represented, or by consent in writing as permitted under the Act, shall be sufficient for the transaction of any business, unless otherwise provided by law or the Governing Documents. Additional notice requirements for actions proposed to be taken by the Association which require a voted approval by its Members may be set forth in the Articles of Incorporation or the ByLaws of the Association, as from time to time amended or restated.

3.05. Committees. The Association shall have the authority to establish, at any time and on such terms as the Board in its discretion may adopt, such committees as the Board may desire to carry out the purposes of this Declaration. Each committee established by the Board shall have such membership, rights, powers, duties, authorities and limitations, shall perform such functions and services, and shall exist for such period of time, as the Board in its discretion may determine consistent with the Act. Without in any way limiting the generality of the foregoing, the Board is expressly authorized and empowered to establish one or more committees which may have up to the same right, power and authority of the Association as permitted by the Governing Documents and the Act with respect to specific categories of property; for example, a committee with jurisdiction over the office and institutional portions of the Development, a committee with jurisdiction over the industrial portions of the Development, a committee with jurisdiction over the residential portions of the Development and a committee with jurisdiction over the Common Areas.

3.06. Articles of Incorporation and ByLaws. The Articles of Incorporation and ByLaws of the Association, as from time to time amended and restated, are incorporated by this reference into this Declaration with the same force and effect as if they had been recited verbatim herein. Accordingly, the Articles of Incorporation and ByLaws, as

from time to time amended and restated, shall have the same force, effect and dignity as the provisions of this Declaration. Every reasonable effort shall be made to construe the Articles of Incorporation, the Bylaws and this Declaration, as from time to time amended, supplemented and restated, consistently and so as to give effect to Section 1.01 hereof. However, if any irreconcilable conflict shall arise among the documents, to the extent permitted by law the provisions of this Declaration shall control.

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

3.08. Contracts. The Association shall have the right, power and authority to execute, deliver, perform and enforce any and all contracts (written or oral, with any Person including an Affiliated Person), which the Board authorizes and which are necessary or reasonably appropriate to carry out the duties and responsibilities of the Association under the Governing Documents.

3.09. Creation of Residential Association. Notwithstanding anything to the contrary set forth above, Declarant hereby reserves the exclusive, unrestricted and unconditional right to cause to be created a North Carolina non-profit corporation (the "Residential Association") pursuant to the Act to administer this Declaration or, at Declarant's election, another declaration of master protective covenants, solely with respect to the residential portion or portions of the Development, as designated by Declarant. In such a circumstance, the residential portion or portions so

designated may, at Declarant's election, be removed from this Declaration pursuant to Section 1.03 hereof. If a Residential Association is formed for the aforesaid purpose,

- (a) it shall have the sole and exclusive right, power, authority and obligation to implement the operative declaration as to the designated residential portion or portions of the Development, and the Association identified in clause (e) of Article II hereof shall have no such right, power, authority or obligation,
- (b) an Owner of property in the designated residential portion or portions shall automatically become a member of the Residential Association and shall automatically cease to be, unless the Owner also owns property in the non-residential portion or portions of the Development, a Member of the Association,
- (c) the Residential Association shall have all of the rights and powers as are conferred upon it in its articles of incorporation, in the operative declaration and in the Act, and such additional rights and powers as are reserved unto Declarant in the operative declaration, or are otherwise possessed by Declarant and assigned by Declarant to the Residential Association, which Declarant may do at any time or times,
- (d) the Residential Association shall be managed by its board of directors in accordance with its bylaws and the Act and shall have all of the powers as are possessed by the Association,
- (e) matters pertaining to membership in the Residential Association, including the classes of members, quorum requirements, voting rights and notices, shall be as set forth in the Residential Association's articles of incorporation or bylaws,
- (f) all of the functions of the Committee relative to the designated residential portion or portions of the Development shall be assigned to an architectural control committee of the Residential Association, and

- (g) appropriate amendments to this Declaration shall be adopted pursuant to Section 11.02 hereof.

If the Residential Association is formed prior to the Conversion Date, Declarant shall have the exclusive, unrestricted and unconditional right, power and authority to amend this Declaration for the purpose of deleting herefrom those provisions pertaining to the residential portion or portions of the Development, it being expressly understood and agreed that any such amendment shall not be deemed to materially and adversely effect the rights of (y) any Owner which is then a member in good standing, or the utility, value or marketability of the Owner's Building Site or (z) any lender holding a superior lien on a Building Site, even if such Building Site is located within the residential portion or portions of the Development.

ARTICLE IV

Design and Construction of Improvements

4.01. General. All Improvements shall be designed and constructed in strict accordance with the provisions hereof and the other Governing Documents. Accordingly, without a Variance, any Improvement which is not designed in strict accordance with the Governing Documents and the procedures adopted pursuant thereto shall not be permitted to be constructed and any Improvement which is not constructed in strict accordance with the Governing Documents shall not be permitted to remain.

4.02. Architectural Control Committee. To assist the Board in performing its duties under this Declaration, the Board is hereby authorized to establish an Architectural Control Committee (the "Committee") composed of such members, and possessed of such rights, powers, duties, authorities and subcommittees, as the Board may, from time to time, determine. The construction of any Improvement (or the alteration of any Improvement which the Committee has previously approved) by any Owner other than Declarant shall not be commenced unless and until the Committee shall have issued its written approval to the final working drawings, plans, specifications and other such documentation and materials as the Committee may require with respect thereto, and the same shall have become Approved Plans hereunder. Any Improvements for which any construction or alteration has been commenced or completed without the prior written

consent of the Committee having first been obtained as to the Approved Plans therefor shall be in violation of this Declaration and shall, upon demand by Declarant or the Association, be subject to removal from the Development at the cost of the Owner. Without in any way limiting the permissible scope of the Committee's review process, or the objective or subjective considerations the Committee may utilize in approving or disapproving any submittal hereunder, the Committee shall be fully authorized and empowered to reject any proposed Improvement or alteration on the basis of the Committee's judgment of the unsuitable nature of its architectural character, the inadequacy of its design characteristics or site dimensions, its incompatibility with the Development Standards or any other existing or proposed improvements within the Development or the use of inappropriate building materials or techniques.

4.03. Development Standards. Declarant has heretofore adopted, as applicable to the Development, and does hereby confirm the adoption of, the Development Standards. The Development Standards have been prepared with the utmost due care and attention and with a view toward accomplishing the purposes stated in Section 1.01 hereof. Nevertheless, technological and other changes will undoubtedly occur prior to the time that the Development is fully developed. Accordingly, it is imperative that Declarant have, and Declarant hereby reserves, the exclusive right, power and authority to make any and all revisions to and restatements of the Development Standards as Declarant deems advisable from time to time to accomplish the purposes of this Declaration. Revisions to and restatements of the Development Standards may be adopted by Declarant at any time without any formal requirements therefor. In particular, it shall not be necessary that any revisions or restatements be recorded or otherwise filed in any public records. However, the operative Development Standards which are in effect at any time shall be available for inspection by any Owner or prospective Owner at the Association's or the Committee's office during reasonable business hours. As revisions to and restatements of the Development Standards are adopted, they shall, upon adoption, become automatically binding on each and every Owner; provided, however, that no such revision or restatement shall require the reconstruction or alteration of any Improvement as to which Approved Plans are in existence on the date the revision or restatement was adopted. The previous sentence shall not, however, limit the ability of the Committee to require that

any Owner bring its Improvements into compliance with the then operative Development Standards if and when such Owner submits to the Committee a request for approval of any alterations to Improvements previously constructed by it, or of the construction of new Improvements.

4.04. Review Procedure (Non-Residential Improvements). Unless and until changed by the Committee, and subject to such additional or different requirements as the Committee may from time to time adopt, the design review procedure for any proposed Non-Residential Improvement shall be as follows:

- (a) Master Development Plan Phase. In connection with its Building Site acquisition contract or ground lease, a proposed owner may be required to prepare and furnish in duplicate sets (one of which shall be reproducible) to the Committee a master development plan which will illustrate its intended use of its Building Site and which will include at least the following documentation:
 - (1) a conceptual site plan, showing the quantities, approximate sizes and locations of buildings, the location of parking areas and the routes for automobile circulation; and
 - (2) conceptual elevations, showing how all structures will be sited on the Building Site and the number of stories in each structure.

The approval of any material submitted to the Committee during the master development plan phase shall extend to that material only, shall not render the material approved an "Approved Plan" for purposes of this Declaration and shall not constitute the approval of the Committee for the construction of any item reflected thereon to commence.

- (b) Preliminary Documentation Phase. At the preliminary documentation phase, the Owner of a proposed Improvement shall prepare in a manner consistent with the unconditional approval rendered by the Committee with respect to the Improvement at the master development plan phase,

and furnish in duplicate sets (one of which shall be reproducible) to the Committee, the following documentation:

- (1) a complete site plan showing building footprints, parking and road layouts, sidewalks, existing and proposed grades at such contour intervals as the Committee may prescribe (including spot finished grades at the corners of all buildings and erosion control measures), the designation of all existing trees of over 12" caliper, the exact locations of all proposed Improvements, and all relevant setbacks;
- (2) substantive drawings, plans and specifications for all proposed Improvements, including floor plans and full exterior elevations;
- (3) a complete description (and, if requested by the Committee, the submission of samples) of all proposed exterior materials, including composition, surface textures, colors and methods of assemblage;
- (4) a complete description of the proposed landscaping plan, including the location of all irrigation systems, and the location and identification of all berms, trees, shrubs, bushes, hedges and other vegetation by type, size and number;
- (5) a complete description of the exterior lighting plan, including location, type, candlepower and method of installation;
- (6) a complete description of the utility and drainage plans, including the location and elevations of all sanitary sewer, storm sewer and other utility facilities;
- (7) calculations showing the gross and rentable square footage in each building comprising the Improvements, the total number of parking spaces with separate calculations for surface and structured parking, the ratio of the

number of gross square feet of building area to each parking space provided and a distribution of parking spaces by stall sizes;

- (8) complete plans showing the location of and method of screening of exterior trash collection points, ground mounted building equipment or other free standing elements for which screening is considered by the Committee to be necessary;
- (9) a complete description of all life support systems and handicapped personnel facilities to be incorporated into the Improvements;
- (10) a complete description of the proposed use of the Improvements and a statement of the number of employees who will work therein and the proposed allocations thereof by shifts;
- (11) a time schedule reflecting the estimated commencement date and completion date for the construction of all proposed Improvements; and
- (12) a statement as to whether the Improvements will be constructed simultaneously or in phases and, if in phases, designating the phases in reasonable detail and sequence. If the preliminary documentation phase submittal does not expressly recite that the Improvements will be constructed in phases and designate the phases and the sequence thereof, the Improvements shall be deemed single phase Improvements for all purposes of this Declaration.

Within thirty days after its receipt of the information called for above, together with such additional information as the Committee may require, the Committee shall review and approve (absolutely or conditionally) or disapprove all or any portion of the submittal. If the Committee determines that the preliminary documentation phase submittal is consistent with the unconditionally approved master development plan

submittal with respect to the same proposal, and with the Governing Documents, the Committee shall approve the preliminary documentation phase submittal subject to such conditions as the Committee may determine to be appropriate. If, however, the Committee determines that the submission is not consistent with the Committee's final approval to the master development plan submittal or with the Governing Documents, then the Committee may reject the submission, stating its reasons therefor with reasonable particularity. The Committee shall give written notification to the party submitting the material of the Committee's action. The decision of the Committee with respect to any material submitted to it shall be final. When and if the Committee unconditionally approves the material submitted to it during the preliminary documentation phase, the submitting party may thereafter prepare and furnish to the Committee the materials called for in the construction documentation phase described below. Unless and until the submitting party receives the unconditional approval of the Committee to the material submitted during the preliminary documentation phase, the Committee shall have no duty to review any material of the type called for under the construction documentation phase. The approval of any material submitted to the Committee during the preliminary documentation phase shall extend to that material only, shall not render the material approved an "Approved Plan" for purposes of this Declaration and shall not constitute the approval of the Committee for the construction of any item reflected thereon to commence.

- (c) Construction Documentation Phase. At the construction documentation phase, the Owner of a proposed Improvement shall prepare in a manner consistent with the unconditional approval rendered by the Committee with respect to the Improvement at the preliminary documentation phase, and furnish in duplicate sets (one of which shall be reproducible) to the Committee, its final version of all drawings, plans, specifications and descriptions called for above together with detailed engineering, architectural and

landscaping working drawings and specifications for the Improvements; plans designating access routes for construction traffic; plans designating areas within the Building Site for storage of construction equipment and materials, storage and pick up of trash and concrete truck washdown; and plans for perimeter fencing. Within thirty days after its receipt of such materials, together with such additional information as the Committee may require, the Committee shall review and approve (absolutely or conditionally) or disapprove all or any portion of the submittal. If the Committee determines that the construction documentation phase submittal is consistent with the unconditionally approved master development plan and the preliminary documentation phase submittals with respect to the same proposal, and with the Governing Documents, the Committee shall approve the construction documentation phase submittal subject to such conditions as the Committee may determine to be appropriate. If, however, the Committee determines that the submission is not consistent with the Committee's final approvals to the master development plan and the preliminary documentation phase submittals, or with the Governing Documents, then the Committee may reject the submission, stating its reasons therefor with reasonable particularity. The Committee shall give written notification to the party submitting the material of the Committee's action. The decision of the Committee with respect to any material submitted to it shall be final. When and if the Committee unconditionally approves the materials submitted to it during the construction documentation phase, such materials shall thereupon become "Approved Plans" hereunder. Approved Plans shall bear the initials of a duly authorized representative of the Committee and a duly authorized representative of the Owner of the Improvements reflected thereon. Such initials shall serve to evidence both parties' acknowledgment of the final, approved nature of such Approved Plans. Thereafter (and only thereafter) may the Owner of the proposed Improvement commence the construction thereof.

4.05. Review Procedure (Residential Improvements). Unless and until changed by the Committee, and subject to such

additional or different requirements as the Committee may from time to time adopt, the design review procedure for any proposed Residential Improvement shall be identical to the design review procedure set forth in Section 4.04 hereof with the following exceptions:

- (a) In instances where only a single Residential Improvement is proposed to be constructed by the Owner or an Affiliate thereof, (i) the master development plan phase described in Section 4.04(a) hereof shall not be applicable and, accordingly, the initial design review phase for the Residential Improvement shall be the preliminary documentation phase set forth in Section 4.04(b) hereof and (ii) Section 4.04(b)(7), (8), (9) and (10) hereof shall not be applicable.
- (b) In instances where more than a single Residential Improvement is proposed to be constructed by the Owner or an Affiliate thereof, (i) the master development plan phase described in Section 4.04(a)(1) hereof shall also contain a designation of each lot as referred to in clause (ii) of the definition of "Residential Improvement" and (ii) Section 4.04(b)(7) (insofar as it requires a calculation of rentable square footage and the ratio of gross square feet of building area to each parking space) and (10) hereof shall not be applicable.

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

4.07. Revised Submittals. If the Committee conditionally approves or disapproves in whole or in part any submission

made to it during the master development plan phase, the preliminary documentation phase or the construction documentation phase, the submitting party shall have the right to revise its submission on one or more occasions to cure the Committee's objections and resubmit the revised materials to the Committee. The Committee shall endeavor to review, act upon and notify the submitting party of its decision with respect to any such revised submittal with reasonable promptness.

4.08. Changes In Approved Plans; Construction In Accordance With Approved Plans; Alterations. No changes shall be made in any Approved Plans without the prior written approval of the Committee. No Improvement shall be constructed or, if constructed, allowed to remain, on any portion of the Development other than in strict accordance with the Approved Plans therefor. No alteration, rebuilding or reconstruction shall be made to or of any Improvement without Approved Plans therefor. For purposes of this Declaration, an "alteration" to an Improvement shall mean (a) any change to the structure or the exterior of the Improvement or (b) any change to an Improvement which is visible from the exterior of the Improvement, and a "change" shall mean an addition, a deletion or a combination of existing components.

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

4.10. Records. The Committee shall keep records of each submittal, and of each action taken by the Committee with respect to each submittal, made by any Owner or proposed Owner hereunder. The Committee shall retain for such period as the Committee determines to be appropriate one set of each submittal made during the master development plan phase, the preliminary documentation phase and the construction documentation phase and one set of the Approved Plans therefor (if any) for each Improvement and proposed Improvement. No Owner or prospective Owner shall have any right of access to, or any right to inspect or reproduce,

any portion of any submittal made by any other Owner or prospective Owner.

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

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

ARTICLE V

Uses

5.01. General. No Owner may use any portion of the Development, or permit its Building Site to be used, other

than in strict accordance with all Legal Requirements and, with reference to the Owner's Building Site, the documentation which formed the operative Approved Plans. If any Owner proposes to use, or permit to be used, its Building Site in any manner other than as specifically permitted by the Governing Documents, or which is different from the use which was described in the documentation which formed the operative Approved Plans, then such Owner shall submit a written proposed use request to the Committee which shall state, with reasonable particularity, the use or uses proposed by the Owner. The Committee shall thereafter approve (absolutely or conditionally) or disapprove the request. The Committee shall give written notification to the submitting party of the Committee's action, which shall be final and binding on all Owners.

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

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

- (a) No Owner shall construct or place within the Development, or to allow to remain within its Building Site, any structure or materials of a temporary character, or otherwise store or permit to be stored any property other than as expressly permitted pursuant to Section 5.05 hereof.
- (b) No Owner shall conduct any noxious, offensive or illegal activity or any nuisance within the Development or permit any noxious, offensive or illegal activity or any nuisance to be conducted within its Building Site.
- (c) No Owner shall use any portion of the Development, or permit the use of its Building Site, to raise, breed or keep any animals, reptiles or fowl of any kind; provided, however, that domestic dogs, cats and other usual household pets may be kept by an Owner in its residence if (i) the purpose thereof is not commercial, (ii) in the determination of the Association, the presence thereof does not constitute a nuisance or a danger to other Owners or Occupants and (iii) such pets are kept, confined and leashed in strict accordance with all applicable Legal Requirements.
- (d) No Owner shall use any portion of the Development, or permit the use of its Building Site, as a dumping ground for rubbish, trash, garbage, construction or other debris or any other waste material, other than at those sites (if any) specifically designated by the Association for such purposes. All Owners shall place their rubbish, trash, garbage, debris and waste materials in sanitary, tightly closed containers located (i) on days when no removal is scheduled, at or inside of specific retention points so designated on each Owner's Approved Plans and (ii) on days when removal is scheduled, at specific collection points also so designated on each Owner's Approved Plans.
- (e) No Owner shall use any portion of the Development, or permit its Building Site to be used, for hunting purposes, or discharge from any portion of the Development, or permit to be discharged from its Building Site, any rifle, shotgun, pistol or

other firearm, or any bow and arrow, or any other device or weapon designed to fire or shoot any projectile for the purpose of injuring or killing.

- (f) Other than as set forth in the Approved Plans, no Owner shall place anywhere in the Development, or permit to be placed on its Building Site, any sign, billboard, poster or advertising device of any nature.
- (g) No Owner shall build in the Development, or permit to be built on its Building Site, any open fire; provided, however, that this Section 5.03(g) shall not prohibit the use by any Owner or Occupant of a residence or a commercial restaurant of an interior fireplace or of a small and safe outdoor cooking facility, but only (i) within the Owner's or Occupant's Building Site or such areas as may, from time to time, be designated for such purpose by the Association, (ii) in strict compliance with the instructions as may be provided in the manufacturer's or vendor's manuals for such cooking facilities and (iii) in the case of residences, for non-commercial purposes.
- (h) No Owner shall deface, destroy, cut, remove or injure, or permit any of its employees, contractors, Occupants or invitees to deface, destroy, cut, remove or injure, any Improvement or any trees, shrubs, bushes, hedges or other vegetation growing within the Development; provided, however, that this Section 5.03(h) shall not prohibit an Owner from performing or permitting to be performed appropriate, routine cuttings, prunings and removals of any vegetation within its Building Site in accordance with good landscaping practices.
- (i) No Owner shall use any portion of the Development, or permit to be used its Building Site, in any manner other than in strict compliance with all applicable Legal Requirements.
- (j) No Owner of (i) a single phase development on a Building Site may subdivide its Building Site or otherwise sell, transfer or convey to any Person less than the entirety of its Building Site and

(ii) a multi-phase development on a single Building Site may sell, transfer or convey less than the entirety of that portion of its Building Site which (A) formed the basis of an Approved Plan and on which Improvements have been constructed pursuant thereto or (B) is not covered by the preceding clause (A). This Section 5.03(j) shall not be construed to prevent sales or other transfers of undivided interests in a Building Site.

- (k) No Owner may construct or allow to remain on, or operate from, its Building Site any Improvement, including but not limited to any antenna, tower, microwave dish or other telecommunication equipment, machinery or facilities, which will or may interfere to any extent with the installation, operation, maintenance or use of any telecommunications network or system installed by or on behalf of Declarant (whether along or jointly with others) in the Development for the use of one or more Improvements constructed therein.
- (l) No Owner shall grant any easement or right of way under, across or over any portion of its Building Site.

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

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

5.06. Construction Maintenance. The Owner of the Building Site on which construction (including alteration, rebuilding

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

ARTICLE VI

Common Areas

6.01. General. From time to time Declarant shall designate certain areas within the Development as "Common Areas". The Common Areas shall be used solely for recreational and general welfare purposes. Such Common Areas may include, but need not be limited to, bath and club houses, restrooms, swimming pools, tennis courts, ball parks, picnic areas, pedestrian trails, open areas, greenbelts and general park areas. As areas are so designated as "Common Areas", a specific description of those areas and the uses to which they may be placed shall be prepared and retained in the office of the Association for inspection by all Owners and prospective Owners. Declarant shall have the sole and exclusive, unrestricted and unconditional right to determine how areas will be designated as "Common Areas", to designate areas as "Common Areas" and to delete areas previously designated as "Common Areas" from such designation.

6.02. Maintenance. The Association shall maintain the Common Areas and their facilities in a safe, clean, sightly, attractive and good state of condition and repair. Such maintenance shall include, without limitation and whenever appropriate, repairing, replacing, reconstructing, renewing and repainting any and all facilities constructed within the Common Areas, such as lighting facilities, signs, entrance monuments, markers, traffic control signals, tennis courts, trails, pedestrian walkways, restrooms, swimming pools, basketball courts, baseball diamonds and picnic areas;

removing all litter, trash, garbage and waste; and mowing, watering, fertilizing, weeding, replanting, replacing, pruning and otherwise maintaining all landscaping in the Common Areas. The Association may also maintain areas within public utility easements and repair public streets within or adjacent to the Common Areas. The Association need not perform any maintenance otherwise required under this Section 6.02 if and to the extent that same is performed by a Governmental Authority.

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

6.04. Easements. Declarant hereby declares, creates and reserves, on behalf of the Association, and hereby assigns to the Association, perpetual nonexclusive easements for ingress and egress under, across, over, in and upon all Common Areas for the purpose of performing in the Common Areas the functions which the Association is required or permitted to perform pursuant to this Declaration.

6.05. Transfer and Dedication. Declarant may, at any time and from time to time, convey to the Association any or all of its right, title and interest in and to any area forming a Common Area. Declarant, and after the transfer to the Association the Association, may at any time and from time to time dedicate or otherwise convey, in the Common Area, to any Person or authority any and all water, sanitary sewer, storm water, drainage, street, electrical, telecommunication, gas and other utility easements, lines and facilities and areas in which appurtenances thereto will be constructed and/or maintained. Neither the conveyance, dedication nor acceptance thereof shall, in and of itself, relieve the Association from the obligation to maintain such areas and the facilities located therein, or relieve the Owners from the obligation to participate in the cost thereof.

6.06. Ad Valorem Taxes. Whenever a Building Site contains within its boundaries an area designated as a Common Area, the Owner of the Building Site and the Association shall seek a division of the parcel for tax assessment purposes

and the taxes on the portion designated as a Common Area shall be borne by the Association.

ARTICLE VII

Parcel Maintenance

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

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

7.03. Association's Right to Perform. If an Owner fails to perform any maintenance, repair, replacement, restoration or rebuilding required of it pursuant to any Governing Document, and if such failure continues for ten days after written notice thereof is given to the Owner, then the

Association may (subject to the additional conditions of Section 8.05(b) hereof), but shall not be obligated to, perform such obligation for the account and at the expense of the Owner involved. The amount expended by the Association for such purpose shall be a debt of the Owner, due the Association upon demand, and shall accrue interest at the rate provided for in Section 11.12 hereof. Declarant hereby expressly reserves on behalf of the Association the unrestricted right, power and authority to enter any Building Site at any time for the purpose of determining whether the Owner thereof was maintaining its Building Site and the Improvements thereon in accordance with the Governing Documents and, if not, of performing any maintenance, repair, replacement, restoration or rebuilding which the Owner was obligated, but failed, to perform. If the Association elects to perform, and does perform, any work pursuant to this Section 7.03, the Association shall do so without any liability or obligation to the Owner or any third party, and the Owner of the Building Site hereby assumes liability for, and agrees to defend, indemnify and hold harmless the Association and the Association's officers, directors, Members and agents from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including court costs and reasonable attorney's fees) resulting from any injuries to or death of any person or any damage to any property occurring as a result of the Association's performance of such work. The rights of the Association to perform any work which an Owner was obligated, but failed, to perform shall not be the Association's exclusive right arising as a result of such failure, but rather shall be cumulative of all of the Association's other rights, remedies and recourses, whether at law or in equity, arising as a result thereof.

7.04. Landscape Maintenance. The Association may, at its election and notwithstanding the provisions of Section 7.01 hereof, perform landscape maintenance on any or all Building Sites or enter into one or more contracts, on such terms as the Association may determine, pursuant to which landscape maintenance on any or all Building Sites shall be performed. If the Association elects to perform such landscape maintenance, or if the Association enters into a contract or contracts whereby such maintenance is to be performed, the Owner or Owners of each Building Site covered thereby shall be relieved of their landscape maintenance obligation under Section 7.01 hereof to the extent same is provided by the

Association or the landscape maintenance contractor. Unless landscape maintenance is performed by the Association or contractors for all Building Sites, all sums paid in connection therewith by the Association shall be reimbursed to the Association as a Special Group Assessment. The Owner of each Building Site shall provide the Association and each landscape maintenance contractor with adequate means of ingress and egress to and over, and freedom from unreasonable interference on, such Owner's Building Site so that the Association or the contractor may perform its work thereon in a prompt, professional and uninterrupted manner.

ARTICLE VIII

Assessments

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

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

(b) the design, purchase, installation, replacement and maintenance of facilities or landscaping within (or, with respect to landscaping, adjacent to) the Common Areas;

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

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

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

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

8.02. Covenants For Assessments. Declarant, for itself and each successor Owner, hereby covenants to pay to the Association or its designee its Regular Group Assessment, Special Group Assessment and Special Individual Assessment as and when due pursuant to this Article VIII. The covenant contained in this Section 8.02 shall become binding on each Owner by virtue of such Owner's acceptance of a deed, ground lease or other instrument of conveyance of a Building Site (or interest therein), regardless of whether the covenant be contained in or otherwise referred to in such deed, ground lease or other instrument of conveyance, and shall be deemed to constitute a portion of the purchase money consideration for the acquisition of the Building Site.

8.03. Annual Budget; Regular Group Assessments. For or during each fiscal year while this Declaration is in effect, the Board shall adopt a budget for the Association for that fiscal year. Each budget shall reflect, inter alia, the total anticipated collections and expenditures for such year and a reasonable reserve for replacements and other contingencies. It is anticipated that a separate budget will be adopted for each fiscal year; however, for any year as to which the Board does not adopt a budget, the budget for the preceding year shall continue and be deemed to be adopted by the Board as the budget for the current fiscal year. In such latter event, the date of adoption shall be deemed to be the first day of the current fiscal year. The total amount of the Regular Group Assessment for each fiscal year shall be the total amount of the annual budgeted expenditures adopted by the Board with respect to that fiscal year which are determined by the Board to be generally applicable to the entire Development (and thus which will not include any budgeted expenditures for such year which the Board has designated to be covered by a Special Group Assessment pursuant to Section 8.04(b) hereof) minus any interest attributable to any prior or the current year's Regular Group Assessments or other income. A Regular Group Assessment shall be payable by all Owners of record on

the applicable Record Date. The Regular Group Assessment for any Owner shall equal the product of the total Regular Group Assessment for such year multiplied by a fraction, the numerator of which is the acres (to the nearest one-one hundredth of an acre) in the Owner's Building Site and the denominator of which is the total acres (to the nearest one-one hundredth of an acre) on the applicable Record Date in all Building Sites. If, at the end of any fiscal year, the Association has surplus funds on hand attributable to any prior or the current year's Regular Group Assessments, the Board may, at its discretion, either reduce the Regular Group Assessment for the following year by an equivalent amount or add the surplus to the reserve fund maintained by the Association.

8.04. Special Group Assessments. In addition to the Regular Group Assessments provided for in Section 8.03 hereof, the Association may, at any time and from time to time, levy a Special Group Assessment for the purpose of covering any proper expenditure of the Association (a) for which no provision was made in the annual budget or (b) which benefits only a particular category or group of Owners. A Special Group Assessment shall be payable by either all Owners of record on the applicable Record Date or those Owners of record on such date which the Association has determined has been or will be directly benefitted by the expenditure. An Owner's share of a Special Group Assessment shall equal the product of the total Special Group Assessment multiplied by a fraction, the numerator of which is the acres (to the nearest one-one hundredth of an acre) in the Owner's Building Site and the denominator of which is the total acres (to the nearest one-one hundredth of an acre) on the applicable date (y) where the Special Group Assessment is to be paid by all Owners, in all Building Sites or (z) where the Special Group Assessment is to be paid by certain categories or groups of Owners, in all Building Sites owned by those Owners which the Association has determined have been or will be directly benefitted by the expenditure by the Association of the funds raised pursuant to the Special Group Assessment.

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

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

If an Owner commences corrective action on any matter for which a Special Individual Assessment may be levied against the Owner under this Section 8.05 after the Association has also commenced any corrective action with respect thereto (including the expenditure of sums and the entry into contractual undertakings), the Owner shall be obligated to

the Association for the direct payment or the reimbursement to the Association of all liabilities and expenditures incurred or made by the Association in connection therewith.

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

8.07. Enforcement. Assessments shall be personal and individual debts of the Owner to which the Assessment pertains. No Owner may, for any reason and in any manner, exempt itself from liability for the payment of an Assessment. The Association shall have the right to accept partial payment of any Assessment or reject partial payment and to demand full payment thereof. If the Association elects to accept any partial payment, it shall do so on account only and without in any way waiving any rights, remedies or recourses against the Owner for the balance of the Assessment. The obligation of an Owner to pay Assessments imposed on it during the Owner's period of ownership shall remain the Owner's personal obligation, and

a sale, assignment or other transfer of the Owner's interest in the Building Site shall not, to any extent and in any respect, release the Owner from such liability, even if the grantee, assignee or other transferee of the interest in the Building Site expressly assumes the repayment of all prior Assessments. Accordingly, the Association's Lien shall continue in full force and effect after, and be unaffected by, any sale, assignment or other transfer of an interest in a Building Site. Other than pursuant to a request made in accordance with Section 11.07 hereof, the Association shall have no duty to advise any Owner, any proposed Owner or any other party as to whether any delinquent Assessments exist with respect to an Owner.

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

priority of the Association's Lien. The Association's Lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in like manner of any deed of trust on real property. At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, any Owner and any Affiliated Person, shall have the right to bid upon and become the purchaser of the property being sold.

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

lienholder forecloses its lien on the Building Site or takes (itself or its designee) a "deed in lieu" or other similar conveyance thereof.

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

ARTICLE IX

Certain Easements

9.01. General. Declarant hereby establishes, creates and reserves (a) a perpetual easement for the installation, operation, modification, maintenance, repair, replacement, removal and reinstallation of all electrical, telecommunication, CATV, water, gas, sanitary sewer, storm sewer, drainage and other utility facilities and appurtenances thereto, under, across and over the entirety of the Development and (b) a perpetual easement for the installation, operation, modification, maintenance, repair, replacement, removal and reinstallation of a pedestrian walkway (said walkway not to exceed five feet in width) across those portions of the Development lying within road rights of way, "setback" areas or other areas within which the construction of Improvements is prohibited or restricted. The easements herein reserved may, from time to time, be more precisely located in the Development Standards or by Declarant (prior to the Conversion Date) and the Association (upon and after the Conversion Date) executing and recording in the appropriate public records a plat or other instrument (including deeds) so designating a particular location or locations. The easements herein reserved shall include the right of ingress and egress to and from each Building Site for the purpose of implementing the purposes of the easements together with the right to remove any obstructions which, from time to time, interfere with the reasonable use of the easements. Declarant shall have the right to assign the easements herein reserved to the Association or, in the case of the easement referred to in clause (a) hereof, to one or more companies furnishing the services therein referred to. Declarant or the Association (as the case may be) shall have the right (y) to relocate the easement referred to in clause (a) hereof under, across or over any Building Site without the consent of or any compensation being payable to the Owner thereof, provided that the relocation does not materially and adversely affect the utility, value or marketability of the

Building Site for the then Owner's approved use and (z) to relocate the walkway referred to in clause (b) hereof across any Building Site provided that the walkway, as relocated, falls only within the areas described in clause (b) hereof and does not exceed five feet in width.

ARTICLE X

Declarant's Option to Repurchase

10.01. Covenant to Construct Improvements. Each Owner which acquires a Building Site from Declarant, by accepting a deed to its Building Site, shall conclusively be deemed to have covenanted with Declarant, as a covenant running with the title to the Building Site and as a personal covenant of the Owner, to prosecute diligently the preparation of the phase submittals described in Section 4.04 hereof to the end that Approved Plans result therefrom, and to commence and thereafter to perform in good faith substantial construction of the Improvements described in the Approved Plans approved by the Committee for such Building Site, all within two years after the date the Building Site is conveyed to the Owner. The covenant contained in the preceding sentence shall be deemed to have been made by and shall be binding upon each Owner regardless of whether it was stated or otherwise referred to in the deed. For purposes of this Article X, the term "substantial construction" shall mean, with respect to any Improvement, that the slab therefor has been poured, that all exterior walls therefor have been erected, that the roof thereof has been constructed and that the Improvement has been completely weatherproofed. Upon an Owner's satisfaction of its obligation to substantially construct its Improvements within the time required, Declarant shall, at the request of the Owner, execute a recordable certificate which confirms such fact and waives Declarant's option to repurchase contained in Section 10.02 hereof. If an Owner has satisfied the provisions of Section 4.04(b)(12) hereof with respect to the designation of multi-phase construction on a single Building Site, the timely good faith performance by the Owner of substantial construction of the first phase of the Improvements shall satisfy the provisions of this Section 10.01 as to the entire Building Site.

10.02. Option to Repurchase. If an Owner has not prepared its phase submittals and performed in good faith substantial

construction of its Improvements as and when required under Section 10.01 hereof, Declarant shall have the unrestricted right and option (but not the obligation), which Declarant may exercise at any time within five years after the expiration of the two-year period referred to in Section 10.01 hereof, to repurchase the entirety of the Building Site in the manner herein provided. Declarant may exercise its option to repurchase by the giving of a written "exercise notice" to the Owner in which Declarant states that it has affirmatively exercised its option to repurchase the Building Site. All conveyances of Building Sites by Declarant shall be deemed made and accepted subject to the aforesaid option, and on the condition that the Owner thereof reconvey the Building Site to Declarant upon the timely exercise by Declarant of its option to repurchase.

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

- (a) the Owner shall execute, have acknowledged and deliver to Declarant a general warranty deed or an assignment of ground lease (depending upon whether the Owner had previously acquired the fee or the ground lease estate to the Building Site), conveying the Building Site (or the leasehold estate, as appropriate) to Declarant free and clear of all liens, mortgages, security interests, encumbrances, pledges, assignments, claims, charges, leases (surface, space, mineral or otherwise), conditions, restrictions, reservations, options, conditional sales contracts, rights of first refusal, restrictive covenants, exceptions, easements (temporary or permanent), rights-of-way, encroachments, overlaps or other outstanding claims, rights, titles, interests, estates or equities of any nature whatsoever other than any of the aforesaid which were applicable to the Building Site on the date it was conveyed by Declarant to the Owner or which subsequently arose with the express written consent of Declarant;

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

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

10.04. Right of First Refusal. If an Owner has satisfied the provisions of Section 4.04(b)(12) hereof with respect to the designation of multi-phase construction on a single

Building Site, has prepared its phase submittals and performed in good faith substantial construction of the first phase of the Improvements thereon as and when required under Section 10.01 hereof so as to have satisfied its obligations under Section 10.01 but does not construct all of the subsequent phases of the Improvements thereon, then Declarant shall have the preferential right of first refusal to purchase the remaining portion of the Building Site (which shall be that portion referred to in Section 5.03(j)(ii)(B) hereof) subject to the following provisions:

- (a) if, at any time or from time to time, the Owner receives a bona fide offer for the purchase or ground lease of the remaining portion of its Building Site which the Owner desires to accept, the Owner shall deliver to Declarant an "offer notice" which shall contain a metes and bounds description of the portion and shall state (i) the area (to the nearest one-one-hundredth of an acre) of the portion, (ii) the complete terms (including all warranties, representations and covenants to be made by the Owner as seller), conditions, price and date (which shall be at least thirty days after Declarant's receipt of the offer notice) on which the transfer is proposed to be made, (iii) the identity of the proposed transferee and (iv) that the Owner desires to transfer the portion on the terms, conditions and price (or rental), and to the transferee as set forth therein.
- (b) by thirty days after its receipt of the offer notice, Declarant shall notify the Owner that Declarant either (i) consents to the transfer of the portion of the Building Site on the terms and conditions, at the price or rental, and to the transferee as set forth in the offer notice or (ii) elects to purchase or lease the portion on the same terms and conditions, and at the same price or rental, as set forth in the offer notice.
- (c) if, by the expiration of the thirty day time period, Declarant fails to notify the Owner of its election under clause (b) hereof or Declarant affirmatively notifies the Owner of its election under clause (b)(i) hereof, then the Owner shall be free to sell or lease the portion of its Building Site described in the offer notice upon

(but only upon) the same terms and conditions, at the same (or a greater) price or rental and to the same proposed transferee as identified in the offer notice subject to the condition that such sale or lease be consummated within one hundred eighty days after the expiration of the thirty day time period; if such sale or lease is not consummated on the same terms and conditions, or at the same (or a greater) price or rental, and to the same transferee as specified in the offer notice within the one hundred and eighty day time period, then it may not be consummated without the Owner again complying with the provisions of clause (a) hereof and affording Declarant the option contained in clause (b) hereof. If such sale or lease is consummated timely and in the manner required in the preceding sentence, it shall be subject to, and not in extinguishment of, Declarant's further rights under this Section 10.04 in the event a sale or lease is made by the transferee of all or any portion of the Building Site conveyed to it prior to the time Improvements are constructed on the entirety thereof in accordance with this Declaration.

- (d) if, by the expiration of the thirty day time period, Declarant notifies the Owner of its election to purchase or lease the portion of the Building Site on the same terms and conditions, and at the same price or rental, as stated in the offer notice, then the Owner shall be obligated to sell or lease and Declarant shall be obligated to purchase or rent the portion in accordance therewith. In instances of a sale, the closing shall occur at the same time and place and in the same manner as set forth in Section 10.03 hereof except that the purchase price to be paid by Declarant shall be as stated in the offer notice, and not the price called for in Section 10.03(d) hereof. In instances of a lease, the closing shall occur at Declarant's principal office within ten days after the execution form of the ground lease has been agreed upon between Declarant and the Owner.

10.05. Delivery of Possession. Coincident with any conveyance of a Building Site, or a portion of a Building

Site, to Declarant pursuant to this Article X, possession of the Building Site (or the portion conveyed) shall be delivered to Declarant free and clear of all outstanding claims by third parties.

10.06. Priority. Declarant's rights and options contained in this Article X shall be prior and superior to all liens, security interests and claims including those as to which the Association's Lien is subordinated pursuant to Section 8.09 hereof. Accordingly, the reconveyance of any Building Site to Declarant pursuant to this Article X shall effect the termination and discharge of all subordinate liens, security interests and claims to the same extent as if Declarant had foreclosed a first and prior deed of trust lien on the Building Site, and Declarant shall acquire title to the Building Site free and clear of all such liens, security interests and claims.

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

ARTICLE XI

Miscellaneous

11.01. Term. The covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, burdens

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

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

- (a) Prior to the Conversion Date, Declarant shall have the sole and exclusive right, power and authority to amend and terminate this Declaration, subject to the limitations that no amendment shall be adopted, or if adopted shall become effective, which materially and adversely affects the rights of (i) any Owner which is then a Member in good standing, or the utility, value or marketability of the Owner's Building Site, without the affirmative vote of the Owner or (ii) any lender holding a superior lien on a Building Site without the prior written consent of such lender.
- (b) Upon and after the Conversion Date, this Declaration may be amended by the affirmative vote, by the Class A Members, of at least sixty-six and two-thirds percent of the total votes which those Class A Members in good standing at the time are entitled to cast.
- (c) Upon and after the Conversion Date, this Declaration may be terminated by the affirmative vote, by the Class A Members, of at least seventy-five percent of the total votes which those Class A Members in good standing at the time are entitled to cast.

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

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

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

11.05. Responsibility of Owner. Each Owner shall be responsible for any breach of this Declaration which is the result of the acts or omissions of the Owner, or its officers, directors, shareholders, partners, employees, contractors, agents, invitees or Occupants. Any breach of

this Declaration relating to the use or maintenance of a Building Site is hereby declared to be a nuisance. Accordingly, every right, remedy or recourse allowed by law or equity as a result of, or with respect to the abatement of, any such nuisance is hereby declared to be available to the Association or, subject to the provisions of Section 11.04 hereof, any aggrieved Owner.

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

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

11.08. Notices. All notices and other communications given pursuant to this Declaration shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth in this Section 11.08, or delivered in person to the intended addressee, or sent by prepaid telegram, cable or telex followed by a confirmatory letter. Notice mailed in the aforesaid manner shall become effective three days after deposit; notice given in any other manner, and any notice given to Declarant or the Association, shall be effective only upon receipt by the intended addressee. For the purposes of notice, the address of (a) Declarant shall be 4224 Six Forks Road, Raleigh, North Carolina 27609, (b) the Association shall be 4224 Six Forks Road, Raleigh, North Carolina 27609 and (c) any Owner shall be its last address as shown on the records of the Association at the time the notice is sent. Declarant, the Association and any Owner shall have the continuing right to change its address for notice hereunder by, in the case of a change of address by an Owner, the giving of fifteen days prior written notice to the Association in accordance with this Section 11.08, or, in the case of a change of address

by Declarant or the Association, at the election of Declarant or the Association either the execution of a supplement to this Declaration reflecting such change of address and the recording of same in the appropriate public records or the giving of written notice to each Owner of record in the manner set forth above.

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

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

11.11. Attorney's Fees. If Declarant, the Association or any Owner entitled to do so initiates any litigation against any Owner relating to this Declaration, and prevails in such litigation, or if Declarant or the Association defends against any litigation brought against it by any Owner relating to this Declaration and prevails in such litigation, then such prevailing party shall be entitled to recover, in addition to all damages and other relief allowed by law, all court costs and reasonable attorney's fees incurred in connection with such litigation.

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

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

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

11.15. Waiver. This Declaration may not be waived orally or impliedly, but only by Declarant (prior to the Conversion Date) or the Association (upon and after the Conversion Date) evidencing such waiver in writing. Thus, neither the acceptance of a payment by the Association nor any other custom or practice followed in connection with this Declaration shall constitute a waiver of any provision hereof. Further, neither the failure of the Association to complain of any violation of this Declaration, regardless of how long such failure continues, nor the failure of the Association to invoke (or the election by the Association not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the

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

11.16. Owner's Liability; Subsequent Sale. Upon the divestiture (voluntarily or involuntarily) of the interest of an Owner in all or a portion of its Building Site, the prior Owner shall thereupon be relieved of all liability accruing under this Declaration with respect to such Building Site or the portion thereof as to which the Owner has been divested after the date of divestiture. The preceding sentence shall not, in any way and to any extent, impair the Association's Lien against the Building Site for sums due the Association by the prior Owner or any subsequent Owner, or the obligation of the subsequent Owner for any liabilities accruing after the date of divestiture.

11.17. Exculpation. Neither Declarant nor the Association, nor any of their officers, directors, shareholders or Members, nor any Committee Member (individually and collectively, an "exculpated person"), shall be personally liable to any Person for any act or omission of any nature whatsoever occurring in the the course of acting under or in connection with this Declaration, except gross negligence, willful misconduct or criminal conduct. Without in any way limiting the generality of the foregoing, no exculpated person shall have any liability of any nature whatsoever by virtue of any action taken or not taken with respect to any plans, drawings, specifications, documents, materials and requests for Variances presented to it for review and approval, and under no circumstance shall any such person be deemed to have passed upon the structural integrity or safety of any Improvement described on or in any such materials. In addition to such indemnification as may be contained in the Articles of Incorporation or ByLaws of the Association, the Association hereby agrees to defend, indemnify and hold harmless all officers, directors, Members

and Committee Members of the Association, and their heirs and legal representatives, against all liability (contractual and otherwise) arising out of any contracts entered into by the Association, or any acts or omissions of such officers, directors, Members or Committee Members when acting on behalf of the Association unless such liability arises out of the gross negligence, willful misconduct or criminal conduct of any such person. The foregoing indemnification shall extend to all costs and expenses (including, but not limited to, reasonable attorney's fees and court costs, amounts of judgment paid and amounts paid in settlement) actually or reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or otherwise, in which any such indemnified person may become involved; provided, however, that such indemnification shall not be operative to an indemnified person with respect to any matter settled or compromised unless, in the opinion of independent counsel selected by the Board, there is no reasonable ground for such indemnified person being adjudged liable for gross negligence, willful misconduct or criminal conduct in the claim at issue.

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

NORTH HILLS PROPERTIES, INC.

By Paul A. DelaCourt
Paul A. DelaCourt,
President

ATTEST:

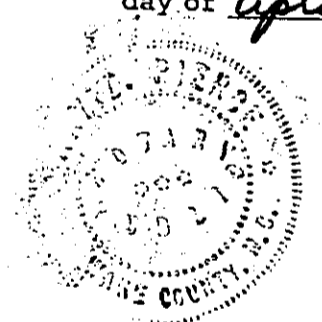
Carol Lee Wu

Secretary

STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

This 2nd day of April, 1986, personally came before me, a notary public in and for said County and State, Paul A. DelaCourt, who, by me being duly sworn, says that he is the President of North Hills Properties, Inc. and that the seal affixed to the foregoing instrument in writing is the official corporate seal of the said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given, and the said Paul A. DelaCourt, President, acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this 2nd day of April, 1986.



Mary D. Pierce
Notary Public

My Commission Expires: 1-7-89

NORTH CAROLINA - WAKE COUNTY
The foregoing certificate of Mary D. Pierce

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 Kenneth C. Wilkins
Acting Deputy Register of Deeds

BOOK 3693 PAGE 509

Property Description

That certain tract or parcel of land containing 975.219 acres, more or less, together with the access easements thereto, situated in Wake County, North Carolina and being more particularly described on the plat entitled "'WESTON' Property of North Hills Properties, Inc." dated November 1, 1985, prepared by Castleberry-Edgerton Co., Raleigh, North Carolina, and recorded in Map Book 1986 at Page 139 of the Registry of Wake County, North Carolina, the said 975.219 acre tract or parcel being composed of the following six parcels:

Parcel A	101.460 acres
Parcel B	756.941 acres
Parcel C	.321 acres
Parcel D	5.578 acres
Parcel E	67.640 acres
Parcel F	43.279 acres

975.219 acres