

**BYLAWS OF  
HIGHLAND OAKS  
HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION.** The name of the corporation is Highland Oaks Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located, and meetings of Members and Directors may be held, at such places within the State of North Carolina as may be designated by the Board of Directors of the Association from time to time (referred to herein as the "Board of Directors").

**ARTICLE II**

**DEFINITIONS**

Section 1. All capitalized terms herein not defined herein shall have the meanings ascribed to such terms in that certain Declaration of Covenants, Conditions and Restrictions for Highland Oaks, executed by Pulte Home Corporation, a Michigan corporation, as Declarant therein, and recorded or to be recorded in the Office of the Register of Deeds of Wake County, North Carolina (as the same may be modified, amended or supplemented, from time to time, the "Declaration").

Section 2. "Membership" means all Members, as a group.

**ARTICLE III**

**MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held in the same month of each year thereafter, at a date, time and place within Wake County, North Carolina selected by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of any class of Member or upon written request of the Members who are entitled to vote one-tenth (1/10) of all of the votes of the Membership.

Section 3. Notice of Meetings. Except as otherwise provided in 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, by mailing a copy of the notice, postage prepaid, not less than ten (10) nor more than sixty (60) days before the meeting, to each Member,

addressed to the Member's address last appearing on the books of the Association, or supplied by the Member to the Association for the purpose of notice. The notice shall specify the place, day, and hour of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes and any proposal to remove a Director or Officer.

Section 4. Quorum. The presence at the meeting of Members or proxies entitled to cast one-tenth (1/10) of the votes of the Membership shall constitute a quorum for any action except as otherwise provided in the Declaration or these Bylaws. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. Thereafter, the quorum requirement shall increase to its original amount.

Section 5. 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 and shall automatically cease upon conveyance by the Member of his Lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS SELECTION: TERM OF OFFICE

Section 1. Number. The Board of Directors shall consist of three (3) directors initially and during the Declarant Control Period (as hereinafter defined), and five (5) directors thereafter (the "Directors"), and shall manage the affairs of the Association.

Section 2. Term of Office. The terms of office of the first Directors elected or appointed by the incorporator at the organizational meeting of the Association to complete the organization of the Association (the "First Directors") shall be for the period until the first annual meeting of the Members at which their successors are elected. The terms of each Director other than such First Directors shall be for one (1) year or until his successor is elected, whichever shall be the longer period. Each Director, other than the First Directors elected or appointed by the incorporator, shall be elected at the annual meeting.

Section 3. Removal. Any Director, other than a First Director, a Director selected by the Declarant during the Declarant Control Period, and those appointed to fill a resignation in accordance with Article V, Section 3, may be removed from the Board of Directors, with or without cause, by a majority vote of the Members of the Association present and entitled to vote at any meeting of the Members at which a quorum is present. Any Director selected by the Declarant during the Declarant Control Period may be removed by the Declarant, with or without cause. In the event of death, resignation or removal, pursuant to these Bylaws, of a Director (a)

if such Director was elected by the Members of the Association, his successor shall be selected by the remaining Members of the Board of Directors and shall serve for the unexpired term of his predecessor and (b) if such Director was elected by the Declarant during the Declarant Control Period, his successor shall be selected by the Declarant.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 6. Resignation. Any Director may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Appointment of Directors by Declarant During Declarant Control Period. Notwithstanding anything to the contrary set forth in Section 2 of this Article V, during the Declarant Control Period, Directors shall not be elected by the Members and instead the Declarant shall be entitled to appoint and remove the members of the Board of Directors of the Association, who are not required to be Members of the Association. Following the expiration of the Declarant Control Period, the Board of Directors shall be elected by the Members in the manner set forth in Section 2 of this Article V.

As used herein, the term "Declarant Control Period" shall mean that period from the filing of the Articles of Incorporation of the Association until such time as the first of the following events occurs:

(a) Class B Membership ceases to exist and is converted to Class A Membership as provided in the Declaration; or

(b) Declarant surrenders the authority to appoint and remove members of the Board of Directors and Officers (as hereinafter defined) of the Association by an express written exercise of such option, executed by the Declarant and delivered to the Association or any of the Directors on its behalf.

If Class B membership has been terminated or has expired and subsequently Class B membership is reinstated as provided for in the Declaration, the Declarant Control Period shall also be reinstated and shall terminate again upon the happening of the first to occur of the foregoing events.

Section 2. Election of Directors.

(a) Nomination. After the expiration of the Declarant Control Period, nomination of persons for election to the Board of Directors may be made by the existing Board of Directors or by any Member wishing to nominate someone, which nomination must be submitted to the Board of Directors. Nominations may also be made from the floor at the annual meeting. The Board of Directors 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. Nominations may be made only from among Members. Non-Members are not eligible to serve on the Board of Directors after the expiration of the Declarant Control Period.

(b) Election. Election to the Board of Directors shall be by written ballot. At the election, the Member or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Neither cumulative nor fractional voting is permitted. In the event that any Director resigns, including a First Director but not including a Director elected by the Declarant during the Declarant Control Period, the remaining Directors shall elect a substitute Director to fill his or her unexpired term.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually at such place and hour as may be fixed from time to time by resolution of the Board of Directors, without the necessity of further notice.

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 at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous

meeting, as previously reduced, until such time as a quorum is present and business can be conducted. Thereafter, the quorum requirement shall increase to its original amount.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

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

(a) adopt and publish rules and regulations governing the use of the Common Areas including any improvements and amenities located thereon, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof, including fines;

(b) suspend the voting rights, and the right of use of any recreational facilities located on any Common Area during any period in which the Member is in default in the payment of any assessment levied by the Association; these rights may also be suspended for a period not to exceed sixty (60) days for an infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) employ a manager, independent contractors, or other employees or contractors as they deem necessary, and to prescribe their duties, which may include the carrying out of powers or duties of the Board of Directors herein specified; and

(e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Area.

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

(a) keep 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 a statement is requested in writing by the holders of one-fourth (1/4) of the votes of the Class A Members, and to make its financial and other records reasonably available for examination by Members and their authorized agents;

(b) supervise all Officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration:

(1) fix the amount of the annual assessment against each Lot as provided in the Declaration;

(2) send written notice of each annual assessment and each special assessment to every Lot Owner subject thereto, as provided in the Declaration; and

(3) foreclose the lien against a Lot if the Owner thereof has not paid the assessment thereon within such time as the Board of Directors may determine, or bring an action at law against the Lot Owner personally obligated to pay the same;

(d) issue, or cause an appropriate Officer to issue, upon demand by any person and within 10 business days of receipt of such demand, a certificate setting forth whether or not any assessment has been paid; a reasonable charge may be made by the Board of Directors for the issuance of these certificates (if the certificate states that an assessment has been paid, the certificate shall be conclusive evidence of payment with respect to any person relying on the certificate);

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Areas to be maintained.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The Officers of this Association shall be a President and Vice-President, a Secretary, and a Treasurer, one or more Assistant Secretaries, and such other Officers as the Board of Directors may from time to time by resolution create (the "Officers"). An Officer may hold more than one (1) office at any given time, but there shall be no less than two (2) Officers holding the offices of President, Vice President, Treasurer and Secretary at any given time.

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

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

Section 4. Special Appointments. The Board of Directors 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 of Directors 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 of Directors. Any Officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The Officer appointed to the vacancy shall serve for the remainder of the term of the Officer he or she replaces.

Section 7. Duties. The duties of the Officers are as follows:

(a) President. The President (the "President") shall preside at all meetings of the Members and of the Board of Directors and see that orders and resolutions of the Board of Directors are carried out. The President shall have authority to sign all leases, mortgages, deeds of trust, deeds, and other written instruments, including but not limited to amendments to the Declaration and certifications thereof by the Association.

(b) Vice President. The Vice President (the "Vice President") shall act in the place and stead of the President in the event of his absence or inability or refusal to act, and exercise and discharge such other duties as may be required of him by the Board of Directors. The Vice President shall likewise have authority to sign all leases, mortgages, deeds of trust, deeds, and other written instruments, including but not limited to amendments to the Declaration and certifications thereof by the Association.

(c) Secretary; Assistant Secretaries. The Secretary (the "Secretary") shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; prepare amendments to the Declaration or certifications thereof by the Association upon approval thereof by the Association; record amendments to the Declaration and/or certifications thereof by the Association; attest to the execution of documents by the President or the Vice President; and perform such other duties as required by the Board of Directors. Any Assistant Secretary (the "Assistant Secretary") may act in the place and stead of the Secretary in the event of his or her absence or inability or refusal to act.

(d) Treasurer. The Treasurer (the "Treasurer") shall receive and deposit in appropriate bank accounts all monies of the Association and disburse these funds as directed by resolution of the Board of Directors; keep proper books of account; cause an independent annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members requesting the same.

## ARTICLE IX

### COMMITTEES

The Association shall appoint such committees as deemed appropriate in carrying out its purposes.

## 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. 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 a reasonable cost.

## ARTICLE XI

### ASSESSMENTS AND FINES

As more fully provided in the Declaration, each Member is obligated to pay to the Association assessments which are secured by a continuing lien upon the Lot against which the assessment is made. If the assessment is not paid on the due date, the assessment shall bear interest as provided in the Declaration, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of its Lot.

The Association may also establish a schedule of fines for violations of the terms of the Declaration. Fines may be imposed after notice to the Owner and an opportunity to be heard. Fines may be enforced in the same manner as assessments.

## ARTICLE XII

### AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by the holder of two-thirds (2/3) of the votes of the Members of the Association present in person or by proxy at the meeting at which the vote is taken; provided, however, the consent of the Declarant shall be required for any amendment so long as Declarant owns at least twenty-five percent (25%) of the Lots.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Articles or these Bylaws, the Declaration shall control.

ARTICLE XIII

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation and end on December 31<sup>st</sup> of that year.

The seal of the Association shall be in the form impressed on the margin of this page or in such form as the Board of Directors shall adopt from time to time.

SEAL:

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the Highland Oaks Homeowners Association, Inc. a North Carolina corporation; and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, duly adopted by the Board of Directors thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of the \_\_\_\_\_ day of May, 2005.

\_\_\_\_\_  
Susan Burcham, Secretary

ARTICLES OF INCORPORATION  
OF  
HIGHLAND OAKS  
HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of Chapter 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 nonprofit corporation and does hereby certify:

ARTICLE I

The name of the Corporation is HIGHLAND OAKS HOMEOWNERS ASSOCIATION, INC., hereafter called the "Association".

ARTICLE II

The principal and registered office of the Association is located at 150 Fayetteville Street Mall, Suite 2100, Raleigh, Wake County, North Carolina 27601.

ARTICLE III

Nellie K. Shipley, whose address is 150 Fayetteville Street Mall, Suite 2100, Raleigh, Wake County, North Carolina 27601, is hereby appointed the initial registered agent of the Association.

ARTICLE IV

The Association is the "Association" contemplated by that certain Declaration of Covenants, Conditions and Restrictions for Highland Oaks, executed by Pulte Home Corporation as Declarant therein, and recorded, or to be recorded, in the Office of the Register of Deeds of Wake County, North Carolina, (as the same may be modified, amended or supplemented from time to time, the "Declaration"). All capitalized terms herein not defined herein shall have the meanings ascribed to such terms in the Declaration.

ARTICLE V

PURPOSES AND POWERS OF THE ASSOCIATION

The Association shall not operate for pecuniary gain or profit, shall not issue capital stock, and no part of the net earnings of the Association shall inure to the benefit of any Member or individual (except that reasonable compensation may be paid for services rendered), and the specific purposes for which it is formed are to provide for: (i) the use, improvement, maintenance, operation and repair of the Common Areas, including any improvements and amenities located thereon; (ii) the establishment of rules and regulations for the use of the Common Areas, including any improvements and amenities located thereon; (iii) the distribution

among the Owners of the Lots of the costs of the use, improvement, maintenance, and repair of the Common Areas, including any improvements and amenities located thereon; and (iv) the promotion of the health, safety, pleasure, recreation, and welfare of the residents of the Dwelling Units within the Property. In furtherance of these purposes, the Association, (by action of its Board unless otherwise noted in these Articles of Incorporation or in the Declaration) shall have full power to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and the Bylaws as the same may be amended from time to time as therein provided, the Declaration being incorporated herein by reference as if set forth at length;

(b) fix, levy, collect, and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration and the Bylaws; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the affairs of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association, subject, however, to the requirements of the Declaration and the Town of Cary Code;

(d) borrow money and, with the assent of at least two-thirds (2/3) of the votes of the Class A Members and eighty percent (80%) of all Members, unless otherwise provided in the Declaration, mortgage, pledge, convey by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (but the rights of the mortgagee shall be subordinate to the rights of the Owners and the Association);

(e) dedicate, sell, or transfer all or any part of the Common Areas to any public agency, authority, or utility with the assent of the Declarant and seventy-five percent (75%) of the votes of the Class A Members as provided in the Declaration, subject, however, to the requirements of the Declaration and to such conditions as may be agreed to by the Members and provided that, notwithstanding the foregoing, the Association and the Declarant shall have the right to grant easements and rights-of-way as provided in the Declaration;

(f) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional property and open space, provided that, except as otherwise provided in the Declaration, any such merger, consolidation or annexation shall have the assent of seventy-five percent (75%) of the votes of the Class A Members and the Class B Members; and

(g) have and to exercise any and all powers, rights and privileges which a non-profit corporation organized under the corporation law of the State of North Carolina by law may now or hereafter have or exercise.

## ARTICLE VI

Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

## ARTICLE VII

The Association shall have two classes of voting memberships (Class A and Class B), as provided in the Declaration. The voting rights of each Member shall be as set forth in the Declaration.

## ARTICLE VIII

### BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors, a majority of whom shall be Members of the Association after the termination of the Declarant Control Period specified in the Bylaws of the Association. The number of directors shall be as provided in the Bylaws of the Association and may be changed by amendment of the Bylaws of the Association.

## ARTICLE IX

### AMENDMENT AND DISSOLUTION

Amendment of these Articles shall require the assent of the holders of sixty-seven percent (67%) of the votes of Members present in person or by proxy at the meeting at which the vote is taken. The Association shall be dissolved upon the termination of the Declaration, or upon the written assent given in writing and signed by not less than sixty-seven percent (67%) of the Members of each class of Members, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by the Declaration or by reason of merger and/or consolidation with any other association as allowed by the Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the Town of Cary, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the Town of Cary or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the Town of Cary or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to

all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the Town of Cary or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by the Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

#### ARTICLE X

The Association shall exist perpetually.

#### ARTICLE XI

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is found to be or adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled, but shall not relieve any director or officer who is an Owner of any obligation it has to pay assessments as a Member of the Association.

#### ARTICLE XII

In the event that any Member finances its Lot through a loan guaranteed by the United States Department of Veterans Affairs or insured by the Federal Housing Authority of the United States Department of Housing and Urban Development, then, if either the United States Department of Veterans Affairs or the United States Department of Housing and Urban Development requires that its approval be obtained, the following actions will require the prior approval of the applicable Department: annexation of additional properties, mergers and consolidations, mortgaging of Common Areas, dedication of additional Common Areas, dissolution of the Association and amendment of these Articles.

ARTICLE XIII

The name and address of the incorporator is as follows:

Nellie K. Shipley  
Womble Carlyle Sandridge & Rice, PLLC  
150 Fayetteville Street Mall, Suite 2100  
Raleigh, North Carolina 27601

IN TESTIMONY WHEREOF, I, being the incorporator, have hereunto set my hand and seal, this the 18<sup>th</sup> day of March, 2005.

  
\_\_\_\_\_  
Nellie K. Shipley

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public hereby certify that Nellie K. Shipley personally appeared before me, and being by me first duly sworn, declares that she signed the foregoing document in the capacity indicated.

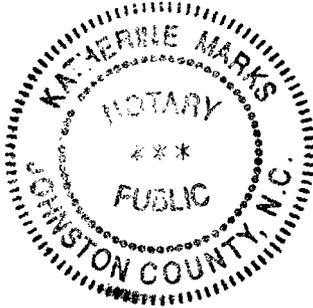
WITNESS my hand and notarial seal, this the 18<sup>th</sup> day of MARCH, 2005.

Katherine Marks  
Notary Public

My Commission Expires:

6-17-2007

[Notary Seal]



BK011270PG02403

WAKE COUNTY, NC 769  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
03/18/2005 AT 16:57:20

BOOK:011270 PAGE:02403 - 02443

Prepared by: Nellie K. Shipley  
and Return to: Womble Carlyle Sandridge & Rice, PLLC (Box 209)  
150 Fayetteville Street Mall  
2100 Wachovia Capitol Center  
Raleigh, North Carolina 27601

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HIGHLAND OAKS

Made by:  
Pulte Home Corporation,  
a Michigan corporation

TABLE OF CONTENTS

RECITALS.....1

DECLARATION .....2

ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION.....2

    Section 1.1 Existing Property.....2

    Section 1.2 Additions to Existing Property.....2

    Section 1.3 Access Easement Reserved.....3

ARTICLE TWO: ADDITIONAL DECLARATIONS.....4

ARTICLE THREE: DEFINITIONS .....4

ARTICLE FOUR: GENERAL PROVISIONS .....6

    Section 4.1 Duration .....6

    Section 4.2 Notices .....7

    Section 4.3 Enforcement .....7

    Section 4.4 Severability .....8

ARTICLE FIVE: ARCHITECTURAL CONTROL.....8

    Section 5.1 Purposes .....8

    Section 5.2 Architectural Control .....8

    Section 5.3 Architectural Control Committee .....8

ARTICLE SIX: RESTRICTION ON USE AND RIGHTS OF THE ASSOCIATION,  
DECLARANT AND OWNERS.....10

    Section 6.1 Permissible Uses .....10

    Section 6.2 Division of Lots; No Time Sharing.....11

    Section 6.3 Water and Sewer Facilities .....11

    Section 6.4 Utilities and Other Easements.....11

    Section 6.5 Intentionally deleted.....12

    Section 6.6 Temporary Structures.....12

    Section 6.7 Committee Approval of Plans and Other Prohibitions .....12

    Section 6.8 Garbage and Storage Receptacles .....12

    Section 6.9 Debris.....13

    Section 6.10 Antennas .....13

    Section 6.11 Landscape Plan; Landscaping .....13

    Section 6.12 Trees and Foliage .....13

    Section 6.13 Unsightly Conditions .....14

    Section 6.14 No Offensive Activity or Fires.....14

    Section 6.15 Certain Plants, Animals and Pets .....14

    Section 6.16 Discharge of Firearms .....15

    Section 6.17 Motorized Vehicles.....15

    Section 6.18 Prohibited Parking .....15

Section 6.19 Signage.....15

Section 6.20 Intentionally deleted.....15

Section 6.21 Vegetation.....15

Section 6.22 Mail and Delivery Boxes.....15

Section 6.23 Above-Ground Pools.....16

Section 6.24 Fences.....16

Section 6.25 Intentionally deleted.....16

Section 6.26 Driveways.....16

Section 6.27 Timely Completion.....16

ARTICLE SEVEN: ADDITIONAL RIGHTS RESERVED TO DECLARANT.....16

Section 7.1 Withdrawal of Property.....16

Section 7.2 Right to Develop.....17

Section 7.3 Right to Transfer or Assign Declarant Rights.....17

Section 7.4 Right to Redesignate Certain Property.....17

ARTICLE EIGHT: MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION;  
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION.....18

Section 8.1 Membership.....18

Section 8.2 Voting Rights.....18

Section 8.3 Voting; Proxies.....18

Section 8.4 Rights and Responsibilities of the Association.....19

Section 8.5 Limits on Litigation of the Association.....21

ARTICLE NINE: PROPERTY RIGHTS IN THE COMMON PROPERTIES.....21

Section 9.1 Members’ Easements of Enjoyment.....21

Section 9.2 Delegation of Use.....21

Section 9.3 Title to Common Properties.....21

Section 9.4 Extent of Members’ Easements.....22

Section 9.5 Stormwater Management Improvements.....23

Section 9.6 Perpetual Access Easement Over Adjoining Lots.....23

ARTICLE TEN: COVENANT FOR PAYMENT OF ASSESSMENTS.....24

Section 10.1 Creation of the Lien and Personal Obligation for Assessments.....24

Section 10.2 Purpose of Assessments.....24

Section 10.3 Assessment of Uniform Rates Within Different  
Categories or Forms of Ownership.....25

Section 10.4 Special Assessments for Capital Improvements.....25

Section 10.5 Special Individual Assessments.....25

Section 10.6 Quorum for any Action Under Sections 10.4 and 10.14.....26

Section 10.7 Date of Commencement of Annual Assessment: Due Dates.....26

Section 10.8 Duties of the Board of Directors.....26

Section 10.9 Effect of Non-Payment of an Owner’s Assessment: The  
Person Obligation of the Owner; the Lien; Remedies of Association.....27

Section 10.10 Subordination of the Lien on an Owner’s Property  
to Mortgages or Deeds of the Trust.....28

BK011270PG02406

Section 10.11 Exempt Property .....28

Section 10.12 Declarant’s Obligations for Assessments .....28

Section 10.13 Maximum Annual Assessment .....29

Section 10.14 Application of Surplus Funds .....29

ARTICLE ELEVEN: EXTERIOR MAINTENANCE AND INSURANCE .....29

    Section 11.1 Maintenance of Dwelling Units, Lots .....29

    Section 11.2 Exterior Maintenance.....30

    Section 11.3 Assessment of Cost on Exterior Maintenance .....30

ARTICLE TWELVE: RECREATIONAL FACILITIES .....30

ARTICLE THIRTEEN: AMENDMENT TO DECLARATION.....31

    Section 13.1 Owner/Member Initiated .....31

    Section 13.2 Declarant’s Right to Unilaterally Amend .....32

    Section 13.3 When Effective; Recording; Title Searching .....32

ARTICLE FOURTEEN: CAPTIONS, INTRODUCTIONS AND GENDER .....33

ARTICLE FIFTEEN: SEVERABILITY AND GOVERNING LAW .....33

EXHIBIT A

EXHIBIT B

BK011270PG02407

NORTH CAROLINA

WAKE COUNTY

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Covenants, Conditions and Restrictions for Highland Oaks (the "Declaration") is made and entered into on this 13 day of March, 2005, by PULTE HOME CORPORATION, a Michigan corporation (hereinafter referred to as the "Declarant").

RECITALS

1. Declarant is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Community") together with any private streets, roads, bike paths, footways, open spaces, common areas, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any Recorded Plat (as hereinafter defined) (sometimes referred to collectively herein as the "Facilities") for the benefit of the Community.
2. Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and Common Area (as hereinafter defined) and, to this end, desires to subject the real property described in Article One, and any additions thereto, to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof.
3. The Declarant's present intention, stated here for information of present intent only and not as warranty or representation of a future fact, is to develop the Community with single family detached residential units of different styles, designs and construction.
4. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Community properties and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and spending the assessments and charges hereinafter created.
5. Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina, prior to the sale of any Lot or Improved Lot (both as hereinafter defined) in the Community, a non-profit corporation to be known as the Highland Oaks Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

DECLARATION

NOW THEREFORE, the Declarant declares that the real property described in Article One, and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth.

ARTICLE ONE:  
PROPERTY SUBJECT TO THIS DECLARATION

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

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

a) Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that are contiguous to the Existing Property, as the Existing Property is increased from time to time under the terms hereof, but such right shall cease to exist on January 31, 2015.

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

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

BK011270PG02409

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

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

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

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

ARTICLE TWO:  
ADDITIONAL DECLARATIONS

Intentionally Deleted.

ARTICLE THREE:  
DEFINITIONS

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

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

"Association" shall mean and refer to the Highland Oaks Homeowners Association, Inc.

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

"Boundary Plat" shall mean and refer to that certain plat of survey recorded in Book of Maps \_\_\_\_, Page \_\_\_\_, Wake Country Registry, which survey depicts all of the property to be encumbered and benefitted by this Declaration at the time of the recording hereof.

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

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

"Common Expenses" shall mean and refer to:

- a) Expenses of administration, operation, utilities, maintenance, repair or replacement of the Common Properties, including payment of taxes and public assessments levied against the Common Properties;
- b) Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
- c) Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in The Properties, in accordance with the Bylaws or this Declaration.
- d) Any valid charge against the Association or against the Common Properties as a whole.
- e) Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation.

BK011270PG02411

"Common Property(ies)" or "Common Area(s)" shall mean and refer to those areas of land described or referred to as "Common Property", "Common Properties", "Common Area", "Common Areas", "Common Open Space", "Common Open Spaces", "Recreation Center Common Open Space", "Open Space" or "Open Spaces" or any other term indicating that the area is intended as open space for the Community in any declaration of covenants, conditions and restrictions to which The Properties are submitted or subjected by the Declarant, or shown on any Recorded Plat, executed by the Declarant and any other owner of such areas of land, of The Properties and labeled thereon as "Common Property", "Common Properties", "Common Area", "Common Areas", "Common Open Space", "Common Open Spaces", "Recreation Center Common Open Space", "Open Space" or "Open Spaces", or shown on a Recorded Plat as pool, play area, private streets, roads, bike paths, or pedestrian walking easements (together with all improvements located thereon), or any property conveyed to the Association for use as Common Area which are a part of The Properties and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots, Dwelling Units, or Improved Lots. The Common Properties shall also include any stormwater device that serves more than one (1) Lot, any utility line located outside public street rights-of-way and public utility easements, and serving more than one (1) Lot, and any shared facility or property required to be shared by governmental regulations. The Common Properties shall include Recreational Facilities, if any, constructed by the Declarant or the Association, as described in Article Twelve hereof.

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

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

"Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within The Properties and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family detached homes. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated.

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

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

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

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

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

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

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

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

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

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

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

"The Properties" shall mean and refer to all the Existing Property and any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of this Declaration.

ARTICLE FOUR:  
GENERAL PROVISIONS

Section 4.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit, or, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50)

BK011270PG02413

years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended in accordance with the provisions of Article 13 hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof.

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

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

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

The Association or the Declarant may impose fines or suspend Community privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant or the Association. In such circumstances, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if any Owner should be fined or if Community privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be Assessments secured by liens as more particularly described in Article Ten hereof. If it is decided that a suspension of Community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

BK011270PG02414

Section 4.4 Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

ARTICLE FIVE:  
ARCHITECTURAL CONTROL

Section 5.1 Purposes. The Declarant desires to provide for the preservation of the values in The Properties with respect to vegetation and any improvements to be constructed or altered on any Lot or Improved Lot constituting a portion of The Properties, and to that end, will establish an architectural control committee, in accordance with Section 5.3 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot or Improved Lot in relation to surrounding structures, natural features and topography.

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

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

Section 5.3 Architectural Control Committee.

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

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

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

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

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

The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner of the Lot or Dwelling Unit as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure

the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Dwelling Unit and shall be in addition to any fees due for processing any requests for approval.

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

c) Application of this Article.

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

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

(iii) Notwithstanding anything to the contrary contained herein, the Declarant's construction of improvements on any Lot or on any Common Area shall be exempt from the provisions of this Article. Nothing contained in this Article shall be construed as prohibiting or conditioning any construction by the Declarant upon any Lot or Common Area while such property is owned by the Declarant. The exemption of the Declarant from the provisions of this Article shall survive the termination of the Class B membership.

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

Section 6.1 Permissible Uses. No Lot or Improved Lot shall be used except for residential purposes allowed under applicable zoning regulations (with the exception of any sales center or model home constructed or used by the Declarant, or his agent who has received the prior written permission of Declarant). Specifically, no "Model Home" or "Open House" type of operation shall be allowed within The Properties other than with Declarant's explicit written permission, notwithstanding Declarant's right to operate such "Model Home" or "Open House," at its discretion, anywhere within The Properties at any time prior to January 1, 2015. No Lot shall be used for any commercial, business or professional purposes. Notwithstanding the foregoing, however, nothing set forth in this Section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot or any Dwelling Unit as the Declarant shall determine; or (b) the Owner of any Dwelling Unit from using a portion of such Dwelling Unit as a home office, provided that such use does not create regular customer or client traffic to and

from such Dwelling Unit and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Dwelling Unit or Lot. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit and its accessory building(s), which shall comply with any applicable zoning regulations and the requirements of this Declaration.

Section 6.2 Division of Lots; No Time Sharing.

a) No Lot or Improved Lot shall be further subdivided into multiple Dwelling Units, except that any two Owners may divide a Lot between them if such Lot is adjacent to the Lots or Improved Lots owned by such Owners and provided further that no more than two (2) Dwelling Units may be constructed on the three (3) recombined Lots and Improved Lots (once recombined into a total of two (2) Lots or Improved Lots). In event of such a recombination, the sideline setbacks and sideline easements shall be released as to the old interior common sidelines and become applicable to the new common sideline created within the old shared Lot.

b) No Lot, Improved Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership unless approved by the Association subject to conditions which may be imposed by the Association. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

Section 6.3 Water and Sewer Facilities. Water and sewer treatment services shall be provided through the Town of Cary. Water and sewer services shall be extended to all Lots and Improved Lots, prior to transfer of title of such Lot or Improved Lot by the Declarant to any Owner.

Section 6.4 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, and the Association upon expiration of the Class B membership, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to The Properties on, in, under and over any private streets or roads in the Community and over any Lot or Improved Lot, and over such areas as are so identified on any Recorded Plats of The Properties or shown on any Site Plan for The Properties on file with and approved by the Town of Cary. In addition, the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the easements reserved, Declarant also reserves

the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class B membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property.

The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot or Improved Lot for which it deems such easement is unnecessary for the efficient development and operation of The Properties, but it may do so only until one year after Class B membership has last terminated.

Section 6.5 Intentionally deleted.

Section 6.6 Temporary Structures. Except as otherwise provided herein, no structure of a temporary character shall be placed upon any portion of The Properties at any time, provided, however, that this prohibition shall not apply to shelters or sheds used by contractors during the construction of a Dwelling Unit, or improvements or additions thereto, on any Lot or Improved Lot. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of The Properties.

Section 6.7 Committee Approval of Plans and Other Prohibitions.

a) The construction of improvements on Lots and Improved Lots shall be governed by Sections 5.2 and 5.3 hereof. In addition, Dwelling Units shall comply with all applicable building, plumbing, electrical and other codes.

b) No garage, storage shed, or carport shall be permitted on an Improved Lot unless architecturally compatible with the primary Dwelling Unit on the Improved Lot.

c) No vent or other pipes or appendages may extend from the front of any Dwelling Unit unless screened from public view by a screening material or shrubbery approved by the Committee.

d) Subject to the right of the Declarant to promote the sale of the Lots through a sales trailer located on The Properties, no mobile homes or trailer homes shall be allowed or approved by the Committee as the residence on any Lot or Improved Lot, and no mobile home or trailer home shall be allowed to remain on any Lot or Improved Lot. "Mobile homes" shall not include modular homes that do not rest on wheels once placed permanently on the Lot or Improved Lot for the purpose of living therein.

Section 6.8 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables if such a program is in place in the Town of Cary), and all garbage receptacles, tools and equipment for use on a Lot or Improved Lot, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Improved Lot, or shall be placed behind the Dwelling

Unit. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Properties.

Section 6.9 Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties. Except for the initial construction of Improvements by the Declarant, during construction on a Lot, job site debris shall be removed from the job site, Lot or Improved Lot at least semi-weekly.

Section 6.10 Antennas. Any television antennas, radio receiver or sender antenna or other similar device attached to or installed on the exterior portion of any Dwelling Unit, or structure, or placed on any Lot or Improved Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the Committee).

Section 6.11 Landscape Plan; Landscaping. As part of the Plans package submitted by an Owner to the Committee for approval of such Owner's Plans for the construction or renovation of improvements, if such Owner's Plans significantly alter the landscaping on a Lot, the Owner shall include a comprehensive landscape plan (the "Landscape Plan") in such package. Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the location and specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and the specifications for other fixtures and structures envisioned to be constructed as part of the Landscape Plan.

The Landscape Plan should seek to unite the Dwelling Unit as well as all other structural aspects of the landscape with its setting and should provide for the introduction of plant materials of sufficient size and quantity to create (when first installed) a sense of maturity to the landscape scene.

Each Dwelling Unit shall be maintained consistently with the Landscape Plan approved for it by the Committee. All material changes to the Landscaping Plan or the landscaping installed on a Dwelling Unit shall be first approved by the Committee.

Section 6.12 Trees and Foliage. Trees measuring three (3) inches or more in diameter (9 3/8 inches in circumference), at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from The Properties without the prior written approval of the Committee, unless located within ten (10) feet of a Dwelling Unit, or site for such Dwelling Unit, or in the path of driveways and walkways located or to be located on any Lot or Improved Lot. Excepted herefrom shall be damaged or diseased trees or trees to be removed because of a reasonably perceived threat of harm to persons or property.

BK011270PG02420

Section 6.13 Unightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkept conditions to exist on his Lot, Improved Lot, Dwelling Unit, or grounds which shall tend to decrease the beauty of The Properties, specifically or as a whole.

During the construction of any improvement to a Lot or Improved Lot in The Properties, the Lot or Improved Lot, roads, bike paths, landscaping and Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Notwithstanding the foregoing, Declarant shall be exempt from the requirements of the preceding sentence during the initial construction of improvements by the Declarant (the "Initial Construction of Improvements"). Any damage to the street, curb, sidewalk or to any part of any Common Areas or utility system caused by an Owner or an Owner's contractor shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot, Improved Lot or Dwelling Unit, and adjoining areas, as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot, Improved Lot, or Dwelling Unit, and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot, Improved Lot or Dwelling Unit, as appropriate, until paid.

Notwithstanding anything to the contrary or apparently to the contrary herein, the Declarant shall be exempt from the provisions set forth in this Section.

Section 6.14 No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Properties. Fires on any Lot or Improved Lot or on any portion of the Common Properties are prohibited except as permitted by the appropriate governmental authority.

Section 6.15 Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of other Owners, or tenants and guests thereof, may be maintained on a Lot or Improved Lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Improved Lot, except that a reasonable number, but no more than three, dogs, cats or other household pets may be kept in each Dwelling Unit, unless otherwise approved by the Board, provided that they are not kept, bred or maintained for any

BK011270PG02421

commercial purpose. At no time shall any household pets be allowed to run free, and at all times when off the Owner's Lot or Dwelling Unit, such household pets shall be on a leash.

Section 6.16 Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Properties is prohibited.

Section 6.17 Motorized Vehicles. All motorized vehicles operating within The Properties must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within The Properties.

Section 6.18 Prohibited Parking. No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a one ton truck or larger) shall be allowed to remain on any Lot or Improved Lot or on any portion of the Common Properties overnight unless it is enclosed within a garage that has been constructed in accordance with the provisions of this Declaration.

Section 6.19 Signage. No commercial signs, except "For Sale" or "For Rent" signs, shall be displayed in public view on any Lot, Improved Lot, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Committee, who may also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant, subject to the regulations or ordinances promulgated by the Town of Cary, shall have the right to locate sign or signs indicating the location of sales and rental centers, identify model homes or living units, any Recreational Facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at the Community.

Section 6.20 Intentionally deleted.

Section 6.21 Vegetation. No existing vegetation shall be disturbed during construction without the express written consent of the Committee. The Committee shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Committee prior to the Owner applying for an occupancy permit from the Town of Cary. This shall not prevent or limit in any way the Declarant from engaging in such earthmoving, clearing, moving, and pruning activities as are necessary to effect the overall plan of development.

Section 6.22 Mail and Delivery Boxes. The Committee shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of the Town of Cary or other appropriate governmental entity.

BK011270PG02422

Section 6.23 Above-Ground Pools. No above-ground pools (except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, which shall not be regulated by the Committee) shall be allowed or approved by the Committee on any Lot or Improved Lot.

Section 6.24 Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Absent an extraordinary showing of need by the Owner of a Lot or Improved Lot, no fence may be constructed any closer to the front of the Lot or Improved Lot than the front corner of the Dwelling Unit thereon. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or Improved Lot and does not unreasonably impede the view of any water course or other attractive feature from any other Lot or Dwelling Unit.

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

Section 6.25 Intentionally deleted.

Section 6.26 Driveways. All driveways, guest parking and turnabouts will be of non-porous materials; and special materials, surface treatments and/or accents may be required by the Committee.

Section 6.27 Timely Completion. Except for the Initial Construction of Improvements, when construction of any Dwelling Unit, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Dwelling Units under construction in The Properties be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of starting construction and that all phases of work, including execution of the Landscape Plan, be complete within one year of Committee approval. In the event that completion should be delayed beyond one year from Committee approval, then in that event, the Committee, may, so long as the Owner is notified within thirty days of the one-year period expiring, by way of unanimous vote of its Members, rescind the existing approval and require that the Owner reapply and seek new approval. As with other Sections hereof, the Association may adopt a schedule of fines and enforce the same in connection with any Owner's failure to act in accordance with this Section.

ARTICLE SEVEN:  
ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 7.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Article One, for the purpose of removing any portion of The Properties which has not yet been improved with

structures from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn.

**Section 7.2 Right to Develop.** After the conveyance of Common Areas to the Association, the Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, restoring the Common Area to its original condition, to the extent such repair and restoration is reasonably practicable.

Every person that acquires any interest in The Properties, by acceptance of a deed made subject to this Declaration or recorded after this Declaration, acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to changes in the site plan filed with the Town of Cary in connection with The Properties as it relates to property outside the Community. Although it is Declarant's intention to develop the Community in accordance with approved site plans, Declarant shall have the right, without the consent or approval of the Owners, to develop the Community at its own pace, in phases, in any order, add Common Area, increase the number of Dwelling Units, change Dwelling Unit types, withdraw real property from the development and alter the site plan with approval of governmental authorities.

**Section 7.3 Right to Transfer or Assign Declarant Rights.** Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Wake County Registry. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall be necessary to record a written assignment necessary to evidence Declarant's consent to such exercise.

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

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

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

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

a) Class A. The Class A Members shall be all Owners of Lots or Dwelling Units within The Properties, other than the Declarant as long as Class B membership exists. Any Class A Member in The Properties shall be entitled to one (1) vote for each Lot or Dwelling Unit which it owns. In the case of multiple ownership of any Lot or Dwelling Unit, however, those multiple Owners shall be treated collectively as one Owner.

b) Class B. The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot or Dwelling Unit owned by it within The Properties. The Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:

- i. Declarant has sold and closed the sale of 84% of all Lots and Improved Lots within The Properties, or
- ii. January 31, 2015.

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

Section 8.3 Voting; Proxies.

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

BK011270PG02425

being made promptly to the person presiding over the meeting by any of the other Owners of the Lot or Improved Lot.

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

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

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

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

- a) maintenance of the Common Properties;
- b) management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Properties or located upon the Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- c) all landscaping of the Common Properties;
- d) maintenance of adequate public liability insurance, in an amount not less than \$1,000,000 per occurrence, insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of 100%, for the benefit of the Association with respect to the Common Properties;
- e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Properties; and
- f) maintenance of private streets and recreational and other facilities located on the Common Properties;
- g) repair or replacement of stamped concrete located on the Common Properties; and
- h) payment of assessments for public and private capital improvements made to or for the benefit of the Common Properties.

BK011270PG02426

During the existence of the Class B membership, the insurance as required in subsection d) above may be provided by a self-insurance program maintained by the Declarant.

The Declarant is responsible for construction of streets and roads within The Properties. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of any private streets and roads constituting Common Areas and all improvements thereon. The Declarant shall be responsible for and maintain all other streets and roads within The Properties until such roads are accepted for maintenance by the applicable governmental authority. Following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association may in its discretion maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities..

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

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

The Association may acquire, hold, exchange and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in Chapter 47F of the North Carolina General Statutes, this Declaration, the Association's Articles of Incorporation or the Bylaws.

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

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

The Association may provide for or perform itself the services of landscaping and maintenance of right-of-way dedication areas on or adjacent to The Properties so as to ensure an aesthetically pleasing and uniform look along roads, streets, rights-of-way, or Common Properties that are within or adjacent to The Properties. Expenses of the Association in performing these tasks, should the Association choose to assume responsibility for these tasks, shall be a Common Expense.

Section 8.5 Limits on Litigation of the Association. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to obtain injunctive relief to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided in Sections 10.1, 10.4, 10.5, and 10.9, and (c) proceedings involving challenges to ad valorem taxes. This Section shall not be amended unless such amendment is made by the Declarant or is approved by a vote of seventy-five percent (75%) of the Members.

ARTICLE NINE:  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 9.1 Members' Easements of Enjoyment. Subject to the provisions of Section 9.3, every Member shall have a right and easement of enjoyment to all of the Common Properties and Facilities. If necessary because of a lack of access across public streets or rights-of-way to Common Properties and Facilities, every Member shall also have an easement of not less than ten (10) feet wide, which shall be shown on a Recorded Plat, for access, ingress, and egress to and from streets, parking areas and walkways or pedestrian walkways in and to all of the Common Properties and the Facilities. The foregoing easements shall be appurtenant to and shall pass with the title to every Lot, Improved Lot, or Dwelling Unit in The Properties.

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

Section 9.3 Title to Common Properties. The Declarant shall convey, and upon such conveyance the Association shall accept, legal title to any Common Properties shown on any Recorded Plat of The Properties, and such title to a Common Property shall be conveyed by the Declarant and accepted by the Association no later than the time of the conveyance of the last Lot within of the Community. The conveyance shall be in fee simple without any encumbrances except drainage, greenway and utility easements and easements reserved hereunder or on Recorded Plats. Title in the Common Properties, and private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

Upon conveyance of the Common Properties by the Declarant to the Association, the Association shall not subsequently subdivide or convey the Common Properties, except as follows:

a) The Association may convey or mortgage the Common Properties with the consent of at least eighty percent (80%) of the votes of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meeting. In the event the Association votes to mortgage all or any part of the Common Properties, the rights of the mortgagee must be subordinated to the rights of the Owners and the Association.

b) In the event the Association is dissolved, the Common Properties shall first be offered to the Town of Cary, and if accepted, deeded to the Town of Cary in fee simple.

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

- (i) written notice of the exchange is given to all Members except in cases where the exchange is done to eliminate an encroachment,
- (ii) after notice is given, if required, the Association approves the exchange in accordance with the requirements of conveying such property herein, and
- (iii) the exchanged properties and other considerations are of like value and utility to the Association.

Conveyance of Common Areas to the Association shall be made subject to the right of the Declarant to construct common improvements or complete construction thereof, as applicable, on the Common Areas. The right of Declarant to construct or complete construction of such improvements shall terminate three (3) years after the termination of Class B membership.

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

a) the right of the Declarant, in its sole discretion, to grade, pave or otherwise improve any road or street shown on any Recorded Plat;

b) the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Properties, including the designation of strips of Common Properties that are no greater than 25 feet in width and which are not required for access to other Common Properties to be designated as Landscape Buffer Areas to be used in accordance with the provisions of Section 6.28 of this Declaration, and to limit the number of guests, to regulate hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Facilities or Recreational Facilities or the peace and tranquility of adjoining residents;

c) the right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of any published rules and regulations adopted by the Board;

d) subject to any governmental regulations, the right of the Association or its assignee to charge reasonable admission and other fees for use of any of the Association's Recreational Facilities situated upon its Common Properties; and

e) the right of the Association to dedicate or transfer all or any part of the Common Properties (which includes streets and roads) or private water/sewer lines to any public agency, authority or utility (public or private) for such purposes and subject to such conditions as may be agreed to by the Members. Except as provided below, no such dedication or transfer shall be effective unless the Declarant and the Members entitled to at least seventy-five percent (75%) of the Class A votes agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that, notwithstanding the foregoing, the Declarant (during Class B membership), and thereafter the Association shall each have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, water, gas and sewer upon, over, under and across any Common Area, without the assent of the Members when, in the sole opinion of the Declarant or the Board, as applicable, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of The Properties and, in the sole opinion of the Declarant or said Board, as applicable, will not unreasonably interfere with the overall use and enjoyment of the Common Areas.

Section 9.5 Stormwater Management Improvements. The Association, until the Town of Cary accepts for public maintenance the stormwater infrastructure within The Properties, will be responsible for maintenance of any stormwater management swales, channels, and check dams. Such maintenance shall include removal of sediments within the swales and channels, restabilization of the swales and channels as needed, check dam repairs, and maintenance of the vegetation cover as necessary. Owners shall be responsible for maintaining and clearing any of such stormwater infrastructure located on their Lots or Improved Lots.

Section 9.6 Perpetual Access Easement Over Adjoining Lots. In the event any Dwelling Unit erected on any Lot or Improved Lot shown on any Recorded Plat of The Properties is located closer than five (5) feet to any lot line, a perpetual access easement over the adjoining lot is hereby established in favor of the Owner of the first Lot and its tenants and contractors. The easement shall be for the purposes of allowing the Dwelling Unit to be maintained and painted. No fence, wall, storage shed or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the Dwelling Unit.

ARTICLE TEN:  
COVENANT FOR PAYMENT OF ASSESSMENTS

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

- a) annual assessments or charges as herein or in the Bylaws provided,
- b) special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- c) Special Individual Assessments, as defined and described in Section 10.5.
- d) working capital assessments of Five Hundred Dollars (\$500.00), due and payable by the grantee at the time such Lot or Improved Lot is conveyed by the Declarant.

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

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

- a) improvement, maintenance, and replacement of any of the Association's Common Properties including, without limitation, the Facilities and Recreational Facilities;
- b) payment of the Common Expenses;
- c) implementation and enforcement of proper maintenance of exteriors of Dwelling Units and related improvements on Improved Lots in The Properties, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Sections 11.1 and 11.2 of this Declaration;
- d) establishment of capital replacement reserves; and

BK011270PG02431

e) acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Properties, the procurement and maintenance of insurance related to those Common Properties, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 10.3 Assessment of Uniform Rates Within Different Categories or Forms of Ownership. Both annual and special assessments shall be fixed at uniform rates for each Dwelling Unit and vacant Lot within The Properties. Except as specified in Sections 10.12 and 10.13, there will be no difference between assessments as to vacant Lots, or between assessments as to Dwelling Units.

Section 10.4 Special Assessments for Capital Improvements.

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

b) In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives a threat to persons or to property, without the consent of the Members. The amount of such Assessment, however, may not exceed Sixty Dollars (\$60.00) per Owner.

Section 10.5 Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot, Improved Lot or Dwelling Unit rather than on all Lots, Improved Lots, Dwelling Units or types of Lots, Improved Lots or Dwelling Units in The Properties, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained herein or in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, the collection of Assessments (both annual and special) or the

BK011270PG02432

collection of damages or charges arising under the Bylaws, all of the foregoing of which shall comprise "Special Individual Assessments."

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

At the first meeting called as provided in Section 10.8, the presence at the meeting of Members, or of proxies, entitled to cast a majority of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Section 10.8, and the required quorum at any such subsequent meeting shall be one-half (½) of the required quorum of each class of Member at the preceding meeting, provided that no such subsequent meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

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

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

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

**Section 10.8 Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement, and the amount of the Assessment or Assessments against each Member, for each Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Written notice of the Assessment or Assessments thereupon shall be sent to every Member subject thereto.

BK011270PG02433

Within thirty (30) days after adoption of any proposed budget for the Community, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be ratified at the meeting unless at that meeting a majority of the Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

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

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

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

after the delinquency date, which late fees shall be in addition to the other changes described herein.

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

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

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

Notwithstanding any provisions of this Section 10.11, no Lot, Improved Lot or Dwelling Unit shall be exempt from said Assessments, charges or liens except as described in Section 10.12 hereof.

Section 10.12 Declarant's Obligations for Assessments. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article during any period of time in which Declarant owns such Lot. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred to a third party by the Declarant, all liens and assessments provided for in this Article for the calendar year in which the conveyance occurs shall become immediately levied against such Lot, and the Owner of such Lot shall upon Closing thereof immediately become liable for the payment of all such assessments. The amount of the annual Assessment that shall become payable with respect to any Lot shall be prorated according to the respective portions of the calendar year that such Lot was owned by the Declarant and by such successor owner.

Section 10.13 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the maximum annual Assessment shall be One Thousand Eight and No/100 Dollars (\$1,008.00) per Lot or Dwelling Unit, as applicable. From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the annual Assessment each year shall be increased by no more than 10% of the previous years' Assessment, unless two-thirds or more of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than 10% more than the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described herein or determined by the duly called meeting as described above. The limitation on the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to (1) a merger or consolidation in which the Association is authorized by law to participate, (2) as an incident to any additions to The Properties or submission of additional property pursuant to Section 1.2(b) of this Declaration, or (3) in connection with the addition of Recreational Facilities to The Properties pursuant to Article Twelve hereof.

Section 10.14 Application of Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expense (including expenses for special Assessments described in Section 10.4 hereof), the funding of a reasonable operating expense surplus, and any prepayment of reserves, shall be paid to the existing Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense Assessments, the election of which application of the funds shall be made by the Board.

ARTICLE ELEVEN:  
EXTERIOR MAINTENANCE AND INSURANCE

Section 11.1 Maintenance of Dwelling Units, Lots. Each Owner of a Dwelling Unit within The Properties, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

- a) to build, repair or restore such Dwelling Unit in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Dwelling Unit;
- b) to keep the Dwelling Unit in good repair as required by this Declaration or by the Bylaws;
- c) to maintain Lots in clean, safe and orderly condition;
- d) to promptly remove all litter, trash, refuse and wastes;
- e) to mow and maintain the lawn on a regular basis, including any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot and not maintained by the Association or the Town of Cary;

- f) to prune trees and shrubs and remove dead or diseased trees, shrubs and other plant material;
- g) to maintain flower and plant gardens;
- h) to maintain exterior lighting and mechanical facilities;
- i) to maintain driveways;
- j) to control soil erosion as required by the Declaration; and
- k) to maintain storm water drainage easements and portions of The Properties served by storm water drainage easements, as required by the Declaration.

The foregoing responsibilities shall be performed in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment of The Properties by persons entitled thereto. Provided, however, and notwithstanding anything to the contrary appearing herein, Declarant is exempt from the provisions of this section with respect to all portions of The Properties it owns, except for any of same on which Dwelling Units are located.

Section 11.2 Exterior Maintenance. After thirty (30) days written notice to an Owner specifying any required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Lot or Improved Lot and (b) maintenance upon any Dwelling Unit that is subject to Assessments under Article Ten hereof. Such maintenance includes (but is not limited to) painting, repairing, replacing and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, exterior improvements on any Dwelling Unit and any other required maintenance as provided herein. Such maintenance as to a vacant Lot may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 11.3 Assessment of Cost on Exterior Maintenance. The cost of any such maintenance shall be assessed against the Lot, Improved Lot or Dwelling Unit, as appropriate, upon which such maintenance is done and shall be treated as a Special Individual Assessment pursuant to Section 10.5 hereof, and shall be a lien against any such Lot, Improved Lot or Dwelling Unit, as heretofore defined and limited, and a personal obligation of the Owner, and shall become due and payable in all respects as provided herein.

**ARTICLE TWELVE:  
RECREATIONAL FACILITIES**

The Declarant may (but shall not be obligated to) construct recreational amenities, including without limitation pool(s), clubhouse(s) serving the pool, playground, walking trails or bike paths, in any areas shown as Common Area on any Recorded Plat or in any areas deeded or to be deeded to the Association for recreational common area (the areas so designated and the improvements erected thereon referred to herein as the "Recreational Facilities"). Any such Recreational Facilities shall comply with all requirements of the governmental regulations or ordinances and shall be provided for the benefit of all Owners of Lots, Improved Lots or

BK011270PG02437

Dwelling Units, their tenants and guests within the Existing Property and to other owners of Lots, Improved Lots or Dwelling Units within other additions submitted to this Declaration, and their tenants and guests. The Recreational Facilities shall be maintained as part of the Common Properties out of assessments imposed on all Owners who have the right of access to and the use of the Recreational Facilities in accordance with the provisions of Article Nine. The Association (by action of its Board) may require that all assessments hereunder be current in order for any Owner to enjoy the use of the Recreational Facilities. Other than the aforementioned right to use such Recreational Facilities as a tenant or guest of an Owner, nonresident memberships or fees paid by the general public shall not be permitted. The Association may impose reasonable regulations regarding the use of any such Recreational Facilities to ensure accessibility, safety, harmony and preservation of any such Recreational Facilities. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed Common Expenses as to all Owners. For a period of one year after Class B membership has last terminated, the Declarant may increase Assessments by up to an additional \$5.00 per month to help fund the maintenance, operation, repair, servicing, replacement and renewal of Recreational Facilities not previously included in the Assessments budget.

ARTICLE THIRTEEN:  
AMENDMENT TO DECLARATION

Section 13.1 Owner/Member Initiated. An amendment to this Declaration may be proposed upon a majority vote of the Owners, with only one Owner per Lot or Dwelling Unit voting, whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than sixty (60) days from date of notice. It shall be required that each Owner be given written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than sixty (60) days before the date set for such special meeting. Such notices shall be made in compliance with the provisions of Section 4.2 hereof, and after made in compliance therewith, shall be deemed to be properly given. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) or more of the votes of the Members entitled to vote in order for such amendment to become effective (with the votes being calculated as provided in Section 8.2). At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of the Association pursuant to a form substantially similar to the form attached as Exhibit B, stating that the amendment was duly adopted and approved by the requisite percentage of Owners. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Wake County, and no such

BK011270PG02438

amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control. Notwithstanding anything herein to the contrary, no meeting of the Association shall be necessary to approve a proposed amendment in the event all Owners (including the Declarant if Declarant owns any property within the Property) execute the proposed amendment to signify their consent thereto.

Without the prior written consent of the Declarant, when Declarant is a Class B Member, there shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of five years from the effective date hereof, and in addition, no Owner/Member-initiated amendments may be made for any reason to Sections 6.3, 6.4, 6.27 or Section 10.12. The above limitations shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 13.2 below.

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

The Declarant may also amend this Declaration by filing an amendment in the Wake County Registry executed by only the Declarant if at the time of the recording of the amendment the Declarant is still the sole owner of all property (excluding streets and rights-of-way) in the Community. Such amendment need not be certified by the Association.

Section 13.3 When Effective; Recording; Title Searching. An amendment to this Declaration that complies with the provisions of Section 13.1 or Section 13.2 shall be effective when recorded in the Wake County Registry. The amendment shall be indexed under the name of the Declarant or its successor, the Association or its successor, or the Owners of the property in The Properties. The failure of the amendment to be indexed under all of the foregoing shall not invalidate such amendment so long as the amendment has been indexed under at least one of the foregoing. Anyone searching title on Lots, Improved Lots or Dwelling Units in The Properties should search under the names of the foregoing to discover amendments to this Declaration that may have occurred after the Lot, Improved Lot or Dwelling Unit has been conveyed to an Owner from the Declarant.

BK011270PG02439

ARTICLE FOURTEEN:  
CAPTIONS, INTRODUCTIONS AND GENDER

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

ARTICLE FIFTEEN:  
SEVERABILITY AND GOVERNING LAW

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

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

DECLARANT:

PULTE HOME CORPORATION,  
a Michigan corporation

By: Stephen P. Schlageter  
Name: Stephen P. Schlageter  
Its:          President

BK011270PG02440

STATE OF North Carolina

COUNTY OF Wake

I, Susan M. Burcham, a Notary Public of Wake County, State of North Carolina, do hereby certify that Stephen P. Schlegel personally came before me this day and acknowledged that he/~~she~~ is \_\_\_\_\_ President of Pulte Home Corporation, a Michigan corporation, and that he/~~she~~, as \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 18 day of March, 2005.

Susan M. Burcham  
Notary Public

My Commission Expires: 12-4-07

[OFFICIAL SEAL]



BK011270PG02441

EXHIBIT A

LEGAL DESCRIPTION OF EXISTING PROPERTY

Tract One:

Beginning at a new iron pipe, said iron pipe being the following two calls from NCGS monument "MURPHY", said monument having NC grid coordinates (NAD83) of N=741,196.536, E=2,060,549.950, North 81°02'50" West 5,171.74 feet to an existing railroad iron, thence South 00°51'17" West 960.01 feet to the point of Beginning, thence from said Beginning point South 00°51'17" West 834.76 feet to an existing iron pipe on the northern right of way of High House Road (SR 1615)(90' R/W), thence with said right of way North 89°56'55" West 9.34 feet to a new iron pipe, thence along a curve to the right having a radius of 1,387.69 feet, an arc length of 424.15 feet, and a chord bearing and distance of North 81°11'33" West 422.50 feet to a new iron pipe, thence North 72°26'10" West 153.26 feet to an existing iron pipe, thence leaving said right of way North 38°58'12" East 930.85 feet to the point and place of Beginning containing 5.735 Acres more or less.

Tract Two:

Beginning at an existing railroad iron, said railroad iron being North 81°02'50" West 5,171.74 feet from NCGS monument "MURPHY", said monument having NC grid coordinates (NAD 83) of N=741,196.536, E=2,060,549.950, thence from said Beginning point South 00°51'17" West 960.01 feet to a new iron pipe, thence South 38°58'12" West 930.85 feet to an existing iron pipe on the northern right of way of High House Road (SR 1615)(90' R/W), thence with said right of way North 72°26'10" West 705.25 feet to a new iron pipe, thence along a curve to the right having a radius of 2,819.93 feet, an arc length of 120.90 feet, and a chord bearing and distance of North 71°12'29" West 120.89 feet to a new iron pipe, thence North 69°58'47" West 63.40 feet to a new iron pipe, thence leaving said right of way North 00°57'08" East 1,437.76 feet to an existing railroad iron, thence South 88°53'39" East 1,139.92 feet to an existing iron pipe, thence South 88°54'09" East 282.58 feet the point and place of Beginning containing 48.092 Acres more or less.





BOOK:011270 PAGE:02403 - 02443

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 Susan M Burcham

\_\_\_\_ 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: George W. Parson  
Assistant/Deputy Register of Deeds

This Customer Group  
\_\_\_\_\_ # of Time Stamps Needed

This Document  
\_\_\_\_\_ New Time Stamp  
\_\_\_\_\_ # of Pages  
41

the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Dwelling Unit and shall be in addition to any fees due for processing any requests for approval.

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

c) Application of this Article.

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

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

(iii) Notwithstanding anything to the contrary contained herein, the Declarant's construction of improvements on any Lot or on any Common Area shall be exempt from the provisions of this Article. Nothing contained in this Article shall be construed as prohibiting or conditioning any construction by the Declarant upon any Lot or Common Area while such property is owned by the Declarant. The exemption of the Declarant from the provisions of this Article shall survive the termination of the Class B membership.

#### ARTICLE SIX:

#### RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS

Section 6.1 Permissible Uses. No Lot or Improved Lot shall be used except for residential purposes allowed under applicable zoning regulations (with the exception of any sales center or model home constructed or used by the Declarant, or his agent who has received the prior written permission of Declarant). Specifically, no "Model Home" or "Open House" type of operation shall be allowed within The Properties other than with Declarant's explicit written permission, notwithstanding Declarant's right to operate such "Model Home" or "Open House," at its discretion, anywhere within The Properties at any time prior to January 1, 2015. No Lot shall be used for any commercial, business or professional purposes. Notwithstanding the foregoing, however, nothing set forth in this Section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot or any Dwelling Unit as the Declarant shall determine; or (b) the Owner of any Dwelling Unit from using a portion of such Dwelling Unit as a home office, provided that such use does not create regular customer or client traffic to and

from such Dwelling Unit and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Dwelling Unit or Lot. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit and its accessory building(s), which shall comply with any applicable zoning regulations and the requirements of this Declaration.

**Section 6.2 Division of Lots; No Time Sharing.**

a) No Lot or Improved Lot shall be further subdivided into multiple Dwelling Units, except that any two Owners may divide a Lot between them if such Lot is adjacent to the Lots or Improved Lots owned by such Owners and provided further that no more than two (2) Dwelling Units may be constructed on the three (3) recombined Lots and Improved Lots (once recombined into a total of two (2) Lots or Improved Lots). In event of such a recombination, the sideline setbacks and sideline easements shall be released as to the old interior common sidelines and become applicable to the new common sideline created within the old shared Lot.

b) No Lot, Improved Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership unless approved by the Association subject to conditions which may be imposed by the Association. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

**Section 6.3 Water and Sewer Facilities.** Water and sewer treatment services shall be provided through the Town of Cary. Water and sewer services shall be extended to all Lots and Improved Lots, prior to transfer of title of such Lot or Improved Lot by the Declarant to any Owner.

**Section 6.4 Utilities and Other Easements.** All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, and the Association upon expiration of the Class B membership, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to The Properties on, in, under and over any private streets or roads in the Community and over any Lot or Improved Lot, and over such areas as are so identified on any Recorded Plats of The Properties or shown on any Site Plan for The Properties on file with and approved by the Town of Cary. In addition, the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the easements reserved, Declarant also reserves

the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class B membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property.

The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot or Improved Lot for which it deems such easement is unnecessary for the efficient development and operation of The Properties, but it may do so only until one year after Class B membership has last terminated.

Section 6.5 Intentionally deleted.

Section 6.6 Temporary Structures. Except as otherwise provided herein, no structure of a temporary character shall be placed upon any portion of The Properties at any time, provided, however, that this prohibition shall not apply to shelters or sheds used by contractors during the construction of a Dwelling Unit, or improvements or additions thereto, on any Lot or Improved Lot. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of The Properties.

Section 6.7 Committee Approval of Plans and Other Prohibitions.

a) The construction of improvements on Lots and Improved Lots shall be governed by Sections 5.2 and 5.3 hereof. In addition, Dwelling Units shall comply with all applicable building, plumbing, electrical and other codes.

b) No garage, storage shed, or carport shall be permitted on an Improved Lot unless architecturally compatible with the primary Dwelling Unit on the Improved Lot.

c) No vent or other pipes or appendages may extend from the front of any Dwelling Unit unless screened from public view by a screening material or shrubbery approved by the Committee.

d) Subject to the right of the Declarant to promote the sale of the Lots through a sales trailer located on The Properties, no mobile homes or trailer homes shall be allowed or approved by the Committee as the residence on any Lot or Improved Lot, and no mobile home or trailer home shall be allowed to remain on any Lot or Improved Lot. "Mobile homes" shall not include modular homes that do not rest on wheels once placed permanently on the Lot or Improved Lot for the purpose of living therein.

Section 6.8 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables if such a program is in place in the Town of Cary), and all garbage receptacles, tools and equipment for use on a Lot or Improved Lot, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Improved Lot, or shall be placed behind the Dwelling

Unit. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Properties.

Section 6.9 Debris. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of The Properties, except as is temporary and incidental to the bona fide improvement of any portion of The Properties. Except for the initial construction of Improvements by the Declarant, during construction on a Lot, job site debris shall be removed from the job site, Lot or Improved Lot at least semi-weekly.

Section 6.10 Antennas. Any television antennas, radio receiver or sender antenna or other similar device attached to or installed on the exterior portion of any Dwelling Unit, or structure, or placed on any Lot or Improved Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the Committee).

Section 6.11 Landscape Plan; Landscaping. As part of the Plans package submitted by an Owner to the Committee for approval of such Owner's Plans for the construction or renovation of improvements, if such Owner's Plans significantly alter the landscaping on a Lot, the Owner shall include a comprehensive landscape plan (the "Landscape Plan") in such package. Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the location and specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and the specifications for other fixtures and structures envisioned to be constructed as part of the Landscape Plan.

The Landscape Plan should seek to unite the Dwelling Unit as well as all other structural aspects of the landscape with its setting and should provide for the introduction of plant materials of sufficient size and quantity to create (when first installed) a sense of maturity to the landscape scene.

Each Dwelling Unit shall be maintained consistently with the Landscape Plan approved for it by the Committee. All material changes to the Landscaping Plan or the landscaping installed on a Dwelling Unit shall be first approved by the Committee.

Section 6.12 Trees and Foliage. Trees measuring three (3) inches or more in diameter (9 3/8 inches in circumference), at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from The Properties without the prior written approval of the Committee, unless located within ten (10) feet of a Dwelling Unit, or site for such Dwelling Unit, or in the path of driveways and walkways located or to be located on any Lot or Improved Lot. Excepted herefrom shall be damaged or diseased trees or trees to be removed because of a reasonably perceived threat of harm to persons or property.

Section 6.13 Unsightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkept conditions to exist on his Lot, Improved Lot, Dwelling Unit, or grounds which shall tend to decrease the beauty of The Properties, specifically or as a whole.

During the construction of any improvement to a Lot or Improved Lot in The Properties, the Lot or Improved Lot, roads, bike paths, landscaping and Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Notwithstanding the foregoing, Declarant shall be exempt from the requirements of the preceding sentence during the initial construction of improvements by the Declarant (the "Initial Construction of Improvements"). Any damage to the street, curb, sidewalk or to any part of any Common Areas or utility system caused by an Owner or an Owner's contractor shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot, Improved Lot or Dwelling Unit, and adjoining areas, as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot, Improved Lot, or Dwelling Unit, and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot, Improved Lot or Dwelling Unit, as appropriate, until paid.

Notwithstanding anything to the contrary or apparently to the contrary herein, the Declarant shall be exempt from the provisions set forth in this Section.

Section 6.14 No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of The Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of The Properties. Fires on any Lot or Improved Lot or on any portion of the Common Properties are prohibited except as permitted by the appropriate governmental authority.

Section 6.15 Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of other Owners, or tenants and guests thereof, may be maintained on a Lot or Improved Lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Improved Lot, except that a reasonable number, but no more than three, dogs, cats or other household pets may be kept in each Dwelling Unit, unless otherwise approved by the Board, provided that they are not kept, bred or maintained for any

commercial purpose. At no time shall any household pets be allowed to run free, and at all times when off the Owner's Lot or Dwelling Unit, such household pets shall be on a leash.

Section 6.16 Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within The Properties is prohibited.

Section 6.17 Motorized Vehicles. All motorized vehicles operating within The Properties must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within The Properties.

Section 6.18 Prohibited Parking. No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a one ton truck or larger) shall be allowed to remain on any Lot or Improved Lot or on any portion of the Common Properties overnight unless it is enclosed within a garage that has been constructed in accordance with the provisions of this Declaration.

Section 6.19 Signage. No commercial signs, except "For Sale" or "For Rent" signs, shall be displayed in public view on any Lot, Improved Lot, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Committee, who may also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant, subject to the regulations or ordinances promulgated by the Town of Cary, shall have the right to locate sign or signs indicating the location of sales and rental centers, identify model homes or living units, any Recreational Facilities and such other informational signs of any type as may be necessary or desirable, in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at the Community.

Section 6.20 Intentionally deleted.

Section 6.21 Vegetation. No existing vegetation shall be disturbed during construction without the express written consent of the Committee. The Committee shall require written proposals for the restabilization of any such disturbed area. Any vegetation disturbed during construction shall be repaired to the satisfaction of the Committee prior to the Owner applying for an occupancy permit from the Town of Cary. This shall not prevent or limit in any way the Declarant from engaging in such earthmoving, clearing, moving, and pruning activities as are necessary to effect the overall plan of development.

Section 6.22 Mail and Delivery Boxes. The Committee shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of the Town of Cary or other appropriate governmental entity.

Section 6.23 Above-Ground Pools. No above-ground pools (except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, which shall not be regulated by the Committee) shall be allowed or approved by the Committee on any Lot or Improved Lot.

Section 6.24 Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Absent an extraordinary showing of need by the Owner of a Lot or Improved Lot, no fence may be constructed any closer to the front of the Lot or Improved Lot than the front corner of the Dwelling Unit thereon. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or Improved Lot and does not unreasonably impede the view of any water course or other attractive feature from any other Lot or Dwelling Unit.

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

Section 6.25 Intentionally deleted.

Section 6.26 Driveways. All driveways, guest parking and turnabouts will be of non-porous materials; and special materials, surface treatments and/or accents may be required by the Committee.

Section 6.27 Timely Completion. Except for the Initial Construction of Improvements, when construction of any Dwelling Unit, structure, improvement, or addition thereto has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Dwelling Units under construction in The Properties be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of starting construction and that all phases of work, including execution of the Landscape Plan, be complete within one year of Committee approval. In the event that completion should be delayed beyond one year from Committee approval, then in that event, the Committee, may, so long as the Owner is notified within thirty days of the one-year period expiring, by way of unanimous vote of its Members, rescind the existing approval and require that the Owner reapply and seek new approval. As with other Sections hereof, the Association may adopt a schedule of fines and enforce the same in connection with any Owner's failure to act in accordance with this Section.

#### ARTICLE SEVEN: ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 7.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Article One, for the purpose of removing any portion of The Properties which has not yet been improved with