Declaration of Protective Covenants

For

The Hamptons

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DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR

NORTHCROSS DOWNS

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TABLE OF EXHIBITS

Exhibit	Name
"A"	Definitions
"B"	Property Submitted
"C"	Additional Property Which Can Be Unilaterally Submitted *by* Declarant
"D"	Bylaws of Hampton at NorthCross Homeowners Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR

NORTHCROSS DOWNS

THIS DECLARATION is made and entered into to be effective the 3-rd day of November 1993, by and among 5-H Land Co., Inc., a North Carolina corporation, and John Wieland Homes of Charlotte, Inc., a Georgia corporation, co-declarants hereunder (such co-declarants hereinafter referred to as "Declarant").

Background Statement

Declarant is the owner of the real property, referred to in Article II, Section 1 hereof (described in the attached Exhibit. "B") and the real property referred to in Article IX, Section 1(a) hereof (described on the attached Exhibit.

Declarant desires to subject the real property described in Article II, Section 1 hereof to the provisions of this Declaration to establish a general scheme of development for said real property, to-wit, a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration and said general scheme of development.

NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected' to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all Persons having any right, title, or interest in all or *any* portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

Article I
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit "A" attached hereto and by reference made a part hereof.

Article II
Property Subject To This Declaration

Section 1. Property Hereby Subjected To This Declaration. The real property described in Exhibit "B" attached hereto and by refereiice made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Other Property. Only the real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as hereinafter provided.

Article III

Association Membership and Voting Rights

Section 1. **Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association* The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section **2. Voting.** Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themslves determine and advise the Secretary of the Association prior to any meeting. IA the absence of such advice, the Lot's vote shall be suspended in the event mote than one Person seeks to exercise it.

Article IV Assessments

Section 1. **Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the 'recreation, health, welfare, common benefit, and enjoyment of the Owners and Occiipants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for **Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, Whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as May be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or sixteen percent (16%) per annum, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be 4 continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for *his* or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within ten (10) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments:on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the AsSociation as of the date of issuance.

Assessments shall be paid at a uniform rate per Lot in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the annual assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay a full annual assessment.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessment to be levied against each Lot for the following year and to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The assessment shall become effective unless disapproved at a meeting by a Majority of the Total Associatioh Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to other assessments authorized herein, the Association may levy special assessments in any year. The Board of Directors is authorized to levy a special assessment without a vote of the membership so long as the total amount of the special assessment to each Lot does not exceed Three Hundred Dollars ($300.00) in any fiscal year and the Board has not levied a special assessment within the previous 12 months. If a special assessment has been levied within the previous 12 months, or the amount of the special assessment exceeds $300.00 per Lot, then the special assessment must be approved by a majority of the total Association vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of ad valorem taxes, or (b) liens for all sums unpaid on a first Mortgage, or ⁝(c) liens for all sums on any Mortgage to Declarant duly recorded in the land records of the counties where the Community is located and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such recordS shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. •

Section 6. Effect of Nonpayment of Assessments;Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installments thereof delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the

Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the lesser of the maximum rate permitted by law or sixteen percent (16%) per annum, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale, or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

Section 7. **Date of Commencement of Annual Assessments/Assessment Obligation of Co-Declarants.**

(a) The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under this Declaration on the first day of the month following the first conveyance of Common Property to the Association and shall be due and payable in a manner and on a schedule as the Board of Directors may provide.

(b) After the commencement of assessment payments as to any Lot, 5-H Land Co., Inc., a co-declarant hereunder, on behalf of itself and its successors and assigns covenants and agrees to pay the full amount of the assessments provided herein for each Lot it owns containing an occupied residence; provided, however, each Lot owned *by* 5-H Land Co., Inc. which does not Contain an occupied residence shall not be subject to any assessment provided for herein.

(c) After the commencement of assessment payments as to any Lot, John Wieland Homes of Charlotte, Inc., a co-declarant hereunder, on behalf of itself and its successors and assigns covenants and agrees to pay the full amount of the assessments provided herein for each Lot it owns upon the first day of the calendar month following the earlier of (i) the expiration of 730 days (two years) from the date of the conveyance of the subject Lot to John Wieland Homes of Charlotte, Inc., or (ii) the date of conveyance of the Lot by John Wieland Homes of Charlotte, Inc. to any third party, or (iii) the date the subject Lot contains an occupied residence; provided, however, each Lot owned by John. Wieland Homes of Charlotte, Inc. shall not be subject to any assessment provided herein until such time.

(d) Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

(e) Notwithstanding anything to the contrary herein, either co-declarant hereunder may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the co-declarant providing such services or materials and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and such co-declarant cannot agree as to the value of any contribution, such co-declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by such co-declarant who are in the business of providing such services and materials. If the Association and the co-declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 8. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XII, Section 1 of this Declaration and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Section 2 of this Declaration shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein):

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Section 9. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required *by* the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Article V
Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall maintain all entry features for the Community and street signs originally installed by the Declarant, if any. The Association shall also maintain all drainage detention and retention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity, and there is hereby reserved to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress, and egress as necessary to permit the Association to perform such maintenance. The Association may, but shall not be obligated to, maintain, repair, or replace, as necessary, all mailboxes or mailbox posts located within the Community.

The Association shall also maintain all property outside of Lots located within the Community which was originally maintained by Declarant. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. If the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provision's hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section,' the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The Cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

(c) Damage and Destruction, If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost *of* restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision *by* a Majority of all three (3) arbitrators shall be binding upon the parties and shall* be a condition precedent to any right of legal action that either party may have against the other.

Article VI
Use Restrictions and Rules

Section 1. General. This Article, beginning ate Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XII, Section 4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete use restrictions and rules and regulations applicable to the Lots and the Common Property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the Community. The Board shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. Such regulations and use restrictions shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all OWners and Occupants until and unless overruled, cancelled, or modified in a regular or special meeting by a Majority of the Total Association Vote.

Section 2. Use of Lots. All Lots shall be used for single-family residential purposes exclusively. Leasing of a Lot for residential purposes shall not be considered a business or business activity.

Section 3. Signs. No sign of any kind shall, be erected by an Owner or Occupant within the Community without the written consent of the Board except: (a) such signs as may be required by legal proceedings; and (b) not more than one (1) "Far Sale" sign consistent with the Community-Wide Standard, having a maximum area of four (4) square feet. The Board shall have the right to erect any reasonable and appropriate signs.

Section *4*. Vehicles. Vehicles shall not be parked on any street within the Community. Vehicles shall not be parked on the Common Property or on any portion of a Lot other than the driveway and the garage. Vehicles shall not be

parked so as to be visible from any Lot for periods of more than twenty-four (24) continuous hours. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans and automobiles.

Section **5. Leasing.** Lots may be leased only for residential purposes.

Section 6. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Lot be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community.

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 10. Architectural Standards.

Each Lot shall contain only one (I) residential structure, and the same shall be designed and constructed only for single-family use. Each such structure shall contain no less than 1,800 square feet of heated area if one-story and no less than 2,000 square feet of heated area if more one-story. "Heated area," as used herein, shall not include garages, porches, basements or out-bUildings.

No exterior construction, alteration, addition, or erection of any nature whatsoever (including, without limitation, fences, pools, tennis courts, exterior lighting, treehouses and play equipment) shall be commenced **or** placed upon any part of the Community, except such as **is** installed by the Declarant, or as **is** approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, or alteration shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location shall have been submitted **in** writing to and approved by the Board **or** its designee. The Board or its designee may promulgate written guidelines for the exercise of this review.

The Board or its **designee** shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its designee **or** the representatives thereof shall have the right, during reasonable hours, to enter upon any Lot to inspect any Lot and any improvements thereon for the purpose of ascertaining whether **or** not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry.

In the event the Board or its designee fails to approve **or** to disapprove such design and location within sixty (60) days after the plans and specifications have been submitted to it, the foregoing will be deemed approved. However, all activities commenced pursuant to plans which have **been** deemed approved shall be consistent with such plans.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Board or its designee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE BOARD, ITS DESIGNEE, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE BOARD, THE BOARD'S DESIGNEE, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS **OF** ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON **OF** MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE BOARD, THE BOARD'S DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY **OF** THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT **OF** OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, **or** maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee. However, the Board reserves the right to (but shall not be obligated to) erect a master antenna, satellite dish or other similar master system for the benefit of the Community.

Section 12. Gardens, Basketball Goals, Etc. Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot. All other planting may be done only with prior written approval of the Board or its designee or in accordance with the guidelines previously established by the Board or its designee. Overseeding of fescue lawns and sodding of lawns with Bermuda or zoysia grasses shall not require prior approval pursuant to this Section. No vegetable garden, hammocks, statuary, or recreational equipment may be placed, erected, allowed or maintained upon any Lot without the prior written consent of the Board or its designee. This provision shall not, however, apply to basketball goals which may be installed after the type and location have been previously approved in writing by the Board or its designee.

Section 13. **Tree Removal.** No trees which are left on the Lot at closing shall be removed without the express consent of the Board o;r its designee, except for (a) diseased or dead trees; and (b) trees needing to be removed to promote the growth of other- trees.

Section 14. Lighting. Notwithstanding Article VI, Section 10 above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (a) seasonal decorative lights during the Christmas season; (b) illumination of other than the front or side yards of a Lot; (c) illumination of model homes and entrance features constructed by the Declarant; and (d) other lighting originally installed by the Declarant. Plans for all other exterior lighting must be submitted and approved in accordance with Article VI, Section 10 hereof. Decorative post lights will not be approved unless they conform with established street lighting.

Section 15. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Lot may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant reserves the right to prepare sloping banks, cut or fill, on a three (3) to one (1) slope on all streets and roads. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired *by* the Person causing the damage at its sole expense.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

Section 17. **Clotheslines, Garbage Cans, Woodpiles.** Etc. All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. Notwithstanding the foregoing, the Association reserves the right to provide and maintain a dumpster for the use of residents within the Community. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to do so.

Section 18. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot(s) or other property in the Community. Any such division, boundary line

change, or replotting shall not be in violation of the applicable subdivision and zoning regulations.

Section 19. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and small firearms of all types.

Section 20. Solar Devices. No artificial or man-made device which is designed or used for collection of or heating *by* solar energy or other similar* purposes shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board or its designee.

Section 21. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent Of the Board or its designee. Under no circumstances shall any fence be placed, erected, allowed or maintained closer to any street than the rear of the residence constructed on such Lot. The Board or its designee may issue guidelines detailing acceptable fence styles or specifications, but in no event may a chain link fence or hog wire fence be approved.

Section 22. Exterior Colors. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed, or maintained upon any Lot must be painted or repainted in a color used by Declarant in the original construction and marketing of residences within the Community or in a color used by John Wieland Homes, Inc., in the original construction and marketing of residences in any subdivision located within the same county as the Community.

Section 23. Mailboxes. All mailboxes and mailbox posts shall be of the same type and color as that originally installed by the Declarant.

Section 24. Detached Structures. No detached structure shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Board or its designee. All detached structures must be consistent in design materials and color with the dwelling on the Lot.

Section 25. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Board or its designee.

Section 26. Above Ground Pools. Above ground swimming pools shall not be permitted in the Community.

Article VII
Insurance and Casualty *Losses*

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 hereof. This insurance shall cover loss or damage *by* fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair· or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury

caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars ($1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance. The Board *is* hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall -be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed *by* the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(0) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these, are reasonably available and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager

without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees, and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and urban Development ("HUD").

Section 2. Damage and Destruction — Common Property.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty allowing for any changes or improvements necessary to comply with applicable building codes. The Board of Directors shall have all enforcement powers specified in Article XII, Section 1, of this Declaration necessary to enforce this provision.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments

may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section **3. Damage and Destruction — Lots.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XII, Section 1 of this Declaration.

Section *4*. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

Article VIII Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article IX
Annexation of Additional Property

Section 1. Unilateral Annexation By Declarant.

(a) As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C" attached hereto and by reference made a part hereof to the provisions of this Declaration and the jurisdiction of the Association *by* filing for record in the Office of the Register of Deeds of the county (or counties) in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights

of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put *by* Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community **or** has the right unilaterally to annex additional property to the Community, upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant so long as the consent of the Declarant **is** required), the Association may annex other real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record **in** the Office of the Register of Deeds of the county (or counties) in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Article X
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, **or** guarantor and the Lot number), (therefore becoming an "eligible holder"), will **be** entitled to timely written notice of:

(a) any condemnation loss **or** any casualty *loss* which affects a material portion of the Community or which affects any Lot on which there **is** a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments **or** charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a firSt Mortgage, upon request, is entitled to written notice from the Association of *any* default in the performance by an Owner of **a** Lot of any obligation under the Declaration or Bylaws of the Association which **is** not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for *losses* to or a taking of the Common Property.

Section 3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owners Lot.

Section 4. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors and officers of the Association and so long as the project is approved by HUD for insuring any Mortgage in the Community (as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) or the VA for guaranteeing any Mortgage in the Community (as determined by telephone inquiry to VA), the following actions shall require the prior approval of the VA and, or HUD, as applicable: annexation of additional property to the Community, except for annexation *by* Declarant in accordance with Article IX, Section 1, hereof pursuant to a plan of annexation previously approved by the VA and, or HUD, as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Common Property; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

Section 6. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI
Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or *as* between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than fiVe (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachMent occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for *Use* and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community.) (No such Mortgage shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex property to the Community.); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community or has the right unilaterally to annex additional property to the Community) and Owners representing at least two-thirds (2/3) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required).

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.,

Section 3. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such

utility or service request a specific license or easement *by* separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Association MaintenanCe. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping located on each Lot which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as *is* reasonably necessary in order to complete the needed maintenance or repair. The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which *is* caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

Section 6. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 7. **Easements for Entry Features and Street Signs.** There *is* hereby reserved to the Declarant and the Association an easement over and upon each Lot for ingress, egress, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and the right to grade the land under and around the entry features.

Article XII
General Provisions

Section 1. Enforcement. Each Owner and every Occupant of a Lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to *his* or her Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, or use restrictions and to assess the

cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, OT the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten {10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, so long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by at least two-thirds (2/3) of the Total Association Vote. A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time *by* Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; *(c)* if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the prior written consent of the Declarant so long as the Declarant *owns* any property primarily for development and/or sale in the Community or subject to annexation by the Declarant to the Community.

Section 5. Partition. The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Conveyance of Common Property by Declarant to Association; Assignment of Contracts. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Association shall also accept assignment of any contracts entered into by the Declarant for the benefit of the Association or the Owners.

Section 10. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 11. Indemnification. In accordance with the North Carolina Nonprofit Corporation Act and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct *was* unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person *is* proper under the circumstances.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions, and any amendments to any of the foregoing, the Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of the Declarant, its successors, and assigns over, under, in, and/or on the Community, without obligation and without charge to the

Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, or replacement in the Community and any other property now owned or which may in the future be owned by the Declarant (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any,* constructed by the Declarant in the Community for business purposes or company functions of the Declarant and any similar use, including but not limited to, sales and marketing meetings, offices for Declarant's sales or other employees and agents, a design studio, and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, and sales offices in the Community.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from the Declarant releasing such right, privilege, or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the Owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the total number of completed dwellings upon the affected Additional Property and the number of Lots in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly, or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any property primarily for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community.

Section 13. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made

available for inspection and copying by any member of the Association or by his duly appointed representative and *by* holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to;

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 14. Financial Statements. Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

Section 15. Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other ,information as the Board may reasonably require.

Section 16. Agreements. Subject to the prior approval of Declarant, so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. **Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 18. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment *is* made *by* the Declarant pursuant to Article XII, Section 4, hereof, or is approved by the

percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 19. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction **or rule**, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein **or** reasonably necessary to effectuate any such right or privilege.

Section 20. Use of Recreational Facilities by Nonmembers
The Board of Directors of the Association shall have the right to grant to persons who are not members of the Association the right to use the community recreational facilities. Except as otherwise set forth in this Section 20, the Board of Directors shall have the sole discretion to establish the extent and duration of non-member use. The Board of Directors shall have the sole discretion in determining the amount of the fee and other charges to be paid by the non-members for use of the community recreational facilities and the terms of such payment.

In the event a non-member who has been granted the right to use the recreational facilities is more than thirty (30) days in arrears in making his or her payment of fees or other charges due, all rights to use such recreational facilities shall be automatically terminated without notice. Termination shall not affect the Associations' rights and remedies for the collection of fees and charges accruing prior to termination. Non-members terminated for non-payment shall not be reinstated or permitted to use the recreational facilities until all fees and charges unpaid at the time of the termination and all charges accruing since the termination and through the end of the period for which use rights were granted are paid in full to the Association. Except as otherwise provided in this Section 20, the Association shall have no obligation to reinstate a terminated member.

The provisions of this section shall apply notwithstanding any contrary provisions in the Declaration, the Bylaws, Articles of Incorporation, rules and regulations, use restrictions and any subsequent amendments thereto.

The Howey Co., Inc. (herein "Howey Co."), an affiliated corporation of Declarant, is the owner of Greenfarm Subdivision, Phase V, as shown on plat thereof recorded in Map Book 25 at Page 545 in the Mecklenburg Public Registry, said subdivision consisting of 21, single-family, residential lots. Said subdivision adjoins the property described on the attached Exhibit "C." Each owner of a lot within Phase V of said subdivision upon which a residence has been erected shall have and is granted the right to use said Community recreational facilities at the same cost applicable to the Owners of Lots within the Community. Said right as to each owner of a lot within Phase V of said Greenfarm subdivision shall be appurtenant to and run with the title to such lot in said. Greenfarm subdivision. Provided, Howey Co. shall not be required to pay assessments, dues or other charges for the use of said recreational facilities, as the responsibility for paying such assessments, dues or charges shall be solely that of the purchasers of completed dwellings within said Greenfarm subdivision. Nothing in this paragraph is intended to in any manner limit or restrict the Declarant°5 rights to grant to other nonmembers the right of use of the Community recreational facilities. The nonmember rights of the owners within Greenfarm Subdivision, Phase V, granted herein DOES NOT grant to said nonmembers membership rights in the Association. The same shall be applicable only to the rights to use the Community recreational facilities granted to other nonmembers. Provided and as above stated, the charges allocable to each

[Corporate Seal]

By: Richard L Bacon
RI

lot owned by a nonmember for use of said recreational facilities shall be limited to the same amount for such as assessed against and charged to each Owner of a Lot within the Community, which assessments and charges shall be made as a separate item to the Owners of Lots within the Community. Use rights granted herein to any owner of a home in the Greenfarm Subdivision, Phase V, may be suspended as to any such owner during any period of nonpayment of dues and assessments *by* such owner.

IN WITNESS WHEREOF, the undersigned have executed this instrument to be effective the day and year first above written.

DECLARANT:

JOHN WIELAND: HOMES OP CHARLOTTE, INC., a Georgia corpOrat' n

C ar·a c o
Sr, Vice President

edre ary

pEM1-.13

GEORGIA, ETA COUNTY

I, .a Notary Public of the County and State aforesaid, ce
"**Pa** na$_L$ R h e 4 tey **personally appeared before me this da nd**
acknowledges that *3_he* **is** A.e.61f-co-vt- **Secretary of John Wieland Homes of Charlotte, Inc., a Georgia corporation, and that by authority duly given and as the act of the** corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its by **corpOrate seal,** and attested .1.1.a4 as **its** t'k.5%.,5.1-0,T.-1-1-- Secretary.

Attest: Pam Sh
Asst

Witness my hand and official stamp or seal, this 1St day of Novesaber, 1993.

Marlene G. Young
Notary Public

My Commission Expires: Notary Public, DeKalb County, Georgia My Commission Expires June 4, 1995

MARLENE G. YOUNG NOTARY PUBLIC DEKALB COUNTY, GEORGIA

5-H LAND CO., INC., a North Carolina corporation

VO:57.

Pres

By: _____ ident

Attest: _____ Secretary

[Corporate Seal]

NORTH CAROLINA, MECKLENBURG COUNTX

,Dras)int

a Notary Public of the County and State! aforesa.i

Sei _____

ges t sat *tatetekt.°r,* _____ personally appeared: before

a c k n o W l e SeOratary,of 5-H Lan

North Carolina corporation, and that by authority duly given and the [illegible] as its corporation, the foregoing instrument was signed in its *name* by President, sealed with its corporate seal, and attested by (her)

Witness my hand and official stamp or seal, this 3rd day of _____, 1993.

WANDA T. HURST NOTARY PUBLIC CATAWBA COUNTY, N.C.

Notary Public, Arpir,L 6,04,5 _____

ires At,/7 -

_____ Secretary.

EXHIBIT "A"

Definitions

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean and refer to Hampton at NorthCross Homeowners Association, Inc., a nonprofit North Carolina corporation, its successors and assigns.

(b) "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina corporate law.

(c) "Bylaws" shall refer to the Bylaws of the Association, attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(d) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) of all or any portion of the real property described in Exhibit "C", attached hereto; and (ii) such additions thereto as may be made *by* the Association (as provided in the Declaration) of other real property.

(f) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community Wide Standard originally established by the Declarant.

(g) "Declarant" shall mean and refer to the co-declarants hereunder, John Wieland Homes of Charlotte, Inc., a Georgia corporation, and 5-H Land Co., Inc., a North Carolina corporation, collectively, and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, or in Exhibit "C", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign *is* designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B", attached hereto, and in Exhibit "C", attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one Person or legal entity, other than the co-declarants, entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

At such time as any named co-declarant does not either own or have the contractual right to purchase any portion of the real property described in Exhibit "B", attached hereto, or Exhibit "C", attached hereto, said entity shall cease to be a co-declarant, and the other named co-declarant shall be the sole Declarant for all purposes stated in this Declaration. So long as said named entities are co-

declarants, the joint action of the two shall be required with respect to all actions to be taken by the Declarant.

(h) "Lot" shall mean any plot of land within the Community/ whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on the plat for the Community, or amendments thereto, recorded in the land records of the county where the Community is located* The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.

(i) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(j) "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(k) "Mortgagee" shall mean the holder of a Mortgage.

(1) "Occupant" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(m) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(n) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(0) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(p) "Total Association Vote" means all of the votes attributable to members of the Association (including votes of Declarant) and the consent of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

EXHIBIT "B"

Property Submitted

Being all of NorthCross Downs Phase I as shown on plat thereof recorded in Map Book 25 at Page 631 in the Office of the Register of DeedS of Mecklenburg County, North Carolina.

EXHIBIT "C"

Additional Property Which Can Be Unilaterally Submitted by Declarant

Being all of those contiguous tracts of land located in Huntersville Township, Mecklenburg County, North Carolina, more particularly described in Deeds to 5-H Land Co., Inc. recorded in Book 7283 at Page 873, Book 7283 at Page 678, Book 7283 at Page 883 and Book 7300 at Page 636 in the Mecklenburg Public Registry LESS AND EXCEPTING so much thereof as comprises NorthCross DoWns Phase I as shown on plat thereof recorded in Map Book 25 at Page 631 in said Registry, said excepted portion being described on Exhibit "B" to this Declaration.

Prepared by and Return to:
Jonathan F. Young Esq.
1950 Sullivan Rd
Atlanta GA 30337

INDEX Grantor Index Under:
Hampton at NorthCross Homeowners Association, Inc.
CROSS-REFERENCE to Declaration:
Deed Book 7531, Page 1

SUPPLEMENTARY DECLARATION AND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR NORTHCROSS DOWNS

This Supplementary Declaration and Amendment is made this 6th day of October 1998, by HAMPTON AT NORTHCROSS HOMEOWNERS ASSOCIATION, INC., a North Carolina corporation (hereinafter referred to as "Association").

BACKGROUND STATEMENT

On November 3, 1993, John Wieland Homes of Charlotte, Inc., n/k/a John Wieland Homes of North Carolina, Inc., and 5-.H Land Co., Inc. (collectively, "Declarant"), executed that certain Declaration of Protective Covenants and Restrictions for NorthCross Downs, which was recorded on November 4, 1993 in Deed Book 7531, Page 1, et seq., in the Office of the Register of Deeds of Mecklenburg County, North Carolina (hereinafter, as supplemented and/or amended from time to time, the "Declaration"). Pursuant to Article IX, Section 2 thereof, subject to the consent of the owner thereof and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community (as defined in the Declaration) or has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of Owners (as defined in the Declaration) of at least two-thirds (2/3) of the Lots (as defined in the Declaration) (other than Lots owned by Declarant so long as the consent of the Declarant is required), the Association may annex real property to the provisions of the Declaration and the jurisdiction of the Association.

Pursuant to Article XI I, Section 4 of the Declaration, the Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex additional property to the Community).

As the Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant) have voted for or consented to (i) the annexation of the real property described in Exhibit "A" attached hereto to the provisions of the Declaration and the jurisdiction of the Association and (ii) the amendments to the Declaration set forth herein, and as the Declarant has also consented to such annexation and amendments, the Association now desires to annex and subject the real property described in Exhibit "A" attached hereto to the provisions of the Declaration and the jurisdiction of the Association and to amend the Declaration as herein provided.

NOW THEREFORE, pursuant to the powers of the Association under Article IX, Section 2 of the Declaration, and in accordance with the provisions of that section, the Association hereby subjects all of those tracts or parcels described on Exhibit "A" attached hereto to the provisions of the Declaration and the jurisdiction of the Association. Such property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the

Declaration, all of which shall run with the title of such property and shall be binding upon all persons having any right, title or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

FURTHER, pursuant to Article XII, Section 4 of the Declaration, and in accordance with the provisions of that section, the Declaration is hereby amended as follows:

The following current provision (Article 1V, Section 7(b)) is hereby deleted from the Declaration in its entirety:

(b) After the commencement of assessment payments as to any Lot, 5H Land Co., Inc., a co-declarant hereunder, on behalf of itself and its successors and assigns covenants and agrees to pay the full amount of the assessments provided herein for each Lot it owns containing an occupied residence; provided, however, each Lot owned by 5-H Land Co., Inc. which does not contain an occupied residence shall not be subject to any assessment provided for herein. ,

The following provision is hereby substituted therefor and inserted as the new Article IV, Section 7(b) of the Declaration:

(b) After the commencement of assessment payments as to any Lot, 5-H Land Co., Inc., a co-Declarant hereunder, and The Howey Co., Inc., on behalf of themselves and their respective successors and assigns, covenant and agree to pay the full amount of the assessments provided herein for each Lot owned containing an occupied residence; provided, however, each Lot owned by 5-H Land Co., Inc. or The Howey Co., Inc. which does not contain an occupied residence shall not be subject to any assessment provided for herein.

2.

The following current provision (the first sentence of Article XII, Section 20) is hereby deleted from the Declaration in its entirety:

For so long as Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX above. Declarant shall have the right to grant to persons who are not members of the Association the right to use the Community recreational facilities (if any) constructed by Declarant

The following provision is hereby substituted therefor and inserted as the new first sentence of Article XII, Section 20 of the Declaration:

> Until December 31, 2003, Declarant shall have the right to grant to persons who are not members of the Association the right to use the Community recreational facilities.

3

Article XII is hereby amended by adding the following new section thereto:

> **Section** 21. **Rights and Benefits for The Howey Co., Inc.** The benefit of all lights and authority granted to "Declarant" under the Declaration, and the benefit of all rights reserved to the "Declarant" under the Declaration, are hereby granted to The Howey Co, Inc., provided, however, in no event shall The Howey Co, Inc. be deemed or construed to be the "Declarant" or a co-Declarant under the Declaration

4.

The following current provision (the first sentence of the second paragraph of Section (g) of Exhibit "A") is hereby deleted from the Declaration in its entirety:

> At such time as any named co-declarant does not tither own or have the contractual right to purchase any portion of the real property described in Exhibit "B", attached hereto, or Exhibit "C", attached hereto, said entity shall cease to be a co-declarant, and the other named co-declarant shall be the sole Declarant for all purposes stated in this Declaration.

IN WITNESS WHEREOF, the undersigned officers of the Association, on behalf of the Association, do hereby certify that this Supplementary Declaration and Amendment was duly adopted pursuant to and m accordance with the Declaration, and the Association has caused this Supplementary Declaration and Amendment to be executed on the day and year first above written.

HAMPTON AT NORTHCROSS
HOMEOWNERS ASSOCIATION, INC, a
North Carolina corporation

By _____
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Print Hame:_ 44,1")V WN)gY/

TRACT ONE

Lying and being in Huntersville Township, Mecklenburg County, North Carolina and being more particularly described as follows:

Commence at a set PK nail located on the on the eastern corner of the land conveyed to Vivian Westerdahl Blashaw by deed recorded in Deed Book 4228 at Page 282 in the Mecklenburg County Public Registry (the "Registry"), which PK nail marks the northwest comer of the property conveyed to James F. Blythe and Louise L. Blythe, Co-Trustee or Successor Trustee by deed recorded in Deed 7037 at Page 631 in the Registry, which point also lies in the centerline of the 100' wide public right-of-way of N.C. 73 (Sam Furr Road); thence with western boundary of the Blythe property (now or formerly) and the eastern boundary of the Blashaw property (now or formerly) and along the eastern boundary of Lots 4 and 5 of Greenfarm Subdivision Phase IV as shown on map recorded in Map Book 25 at Page 544 in the Registry, the eastern boundary of Lots 1 through 6 in reverse order of Greenfarm Subdivision Phase I as shown on map recorded in Map Book 21 at Page 200 in the Registry, and with the eastern boundary of Lot 44, the terminus of the 60' wide public right of way of Vixen Lane and the eastern boundary of Lot 1, all as shown on the map of Greenfarm Subdivision Phase 2 as shown on map recorded in Map Book 22 at Page 99 in the Registry S. 02-11-01 W. 1,640.91 feet to an existing iron rod marking the POINT AND PLACE OF BEGINNING; thence running form the POINT AND PLACE OF BEGINNING and with a new line through the Blythe property (now or formerly) the following five (5) courses and distances: (1) S. 89-31-24 E. 558.16 feet to a point; (2) S. 09-20-09 W. 205.10 feet to a point; (3) S. 80-39-51 E. 130.00 feet to a point; (4) S. 09-20-09 W. 566.20 feet to a point; and (5) S. 27-19-16 E. 334.41 feet to a point located on the eastern boundary of the land conveyed to Mecklenburg County by deed recorded in Deed Book 4680 at Page 656 in the Registry; thence along the common boundary of the Mecklenburg County property (now or formerly) and the Blythe property (now or formerly) the following two (2) courses and distances: (1) S. 32-39-25 W. 300.16 feet to an existing iron pin; and (2) S. 35-41-02 E. 334.22 feet passing across the centerline of the tributary of Torrence Creek to an existing iron rod, which existing iron rod marks the northwest corner of Lot 94 of Harvest Pointe Phase 3 revised as shown on map recorded in Map Book 26 at Page 526 in the Registry; thence with the common boundary of the Blythe property (now or formerly) and Lots 87 through 94 of Harvest Pointe Phase 111 revised in reverse order, S. 49-34-24 W. 723.00 feet to an existing iron rod near and old stone, which iron rod marks the southeast corner of Lot 87 of Harvest Pointe Phase III revised, and the southernmost corner of the Blythe property (now or formerly); thence with the common boundary of the Blythe property and the land conveyed to John B. Monteith and wife, Gwendolyn H. Monteith, by deed recorded in Deed Book 1916 at Page 159 in the Registry the following two (2) courses and distances: (1) N. 42-16-55 W. 391.94 feet to an angle iron found near an old stone; and (2) N. 01-59-32 E. 551.81 feet to a set iron rod, which iron rod marks the southeast corner of Lot 11 of Greenfarm Subdivision Phase 11 Map 2 as shown on map recorded in Map .Book 22 at Page 99 in the Registry; thence with the western boundary of the Blythe property (now or formerly) and the eastern boundary of Lots 5 through 11 in reverse order of Greenfarm Subdivision Phase II Map 2 as shown on map recorded in Map Book 22 at Page 99 in the Registry, and the eastern boundary of Lots 2 through 4 in reverse order of Greenfarm Subdivision Phase II Map 3 as shown on map recorded in Map Book 23 at Page 765 in the Registry N. 02-11-01 E. 1,236.41 feet to the POINT AND PLACE OF BEGINNING, containing 28.737 acres, more or less, and designated as "Phase I" on that survey entitled "Boundary Survey" prepared by Hugh A. Dalrymple, a North Carolina Registered Land Surveyor (RLS-3139) of Delta Land Services, Inc. dated April 28, 1995 and last revised October 26, 1995, reference to said survey being made in aid of description.

Being all of chat property conveyed to The Howey Co., Inc. by deed from James F. Blythe and wife, Louise L. Blythe, dated December 27, 1995, 1995 filed for

SEVEN (7) OTHER SIGNATURE PAGES NOT INCLUDED

EXHIBIT A

TRACT TWO

Commence at a set P.K. nail marking the northeast corner of the land conveyed to Vivian Westerdahl Blashaw by deed recorded in Deed Book 4228 at Page 282 in the Mecklenburg County Public Registry (the "Registry"), which P.K. nail is also located in the centerline of the one hundred (100) foot wide public right-of-way of N.0 73 (Sam Fun- Road), and which P.K. nail also marks the northwest corner of the land conveyed to James F. Blythe & Louise L. Blythe as Co-Trustees or Successor Trustees by deed recorded in Deed Book 7037 at Page 631 in the Registry; thence leaving the centerline of N.0 73 in a southerly direction with the common boundary of the Blythe property (now or formerly) and the eastern boundary of the Blashaw property (now or formerly), the eastern boundary of Lots 4 and 5 of Greenfarm Subdivision Phase IV as shown on map recorded in Map Book 25 at Page 544 in the Registry and with the eastern boundary of Lots 1 through 6 in reverse order of Greenfarms Subdivision Phase I as shown on map recorded in Map Book 21 at Page 200 in the Registry S. 02-11-01 W. 1329.92 feet to the point and place of BEGINNING located on the eastern boundary of Lot 1 of Greenfarms Subdivision Phase 1 as shown on map recorded in Map Book 21 at Page 200 in the Registry; thence running from the point and place of BEGINNING and leaving the eastern boundary of Lot 1 of Greenfarms Subdivision Phase along a new line through the Blythe property (now or formerly) the following five (5) courses and distances: (1) S. 87-48-59 E. 271.72 feet to a point; (2) N. 71-22-31 E. 206.07 feet to a point; (3) S. 21-57-47 E. 266.79 feet to a point; (4) S. 09-20-09 W. 125.11 feet to a point; and (5) N. 89-31-24 W. 558.16 feet to an existing iron rod on the western boundary of the Blythe property (now or formerly) and marking the southeast comer of Lot I of Greenfarms Subdivision Phase II, Map 2 as shown on map recorded in Map Book 22 at Page 99 in the Registry, which iron rod also marks the northeast corner of Lot 2 of Greenfarms Subdivision Phase 2, Map 3 as shown on map recorded in Map Book 23 at Page 765 in the Registry; and thence with the western boundary of the Blythe property (now or formerly) and with the eastern boundary of Lot If the terminus of the sixty (60) foot wide right of way of Vixen Lane, and Lot 44, all as shown on map of Greenfarm Subdivision Phase II, Map 2 recorded in Map Book 22 at Page 99 in the Registry, and with the eastern boundary of Lot I of Greenfarms Subdivision Phase 1 as shown on map recorded in Map Book 21 at Page 200 in the Registry N. 02-11-01 E. 310.99 feet to the point and place of BEGINNING, containing 4,00 acres, more or less.

Being all of that property conveyed to The Howey Co., Inc. from the East Huntersville Baptist Church, Inc. dated December 28, 1995, 1995 filed for record in the Mecklenburg Public Registry.

EXHIBIT A
EXHIBIT A

TRACT THREE

Being all of that tract of land consisting of approximately 1.8.572 acres located in Huntersville Township, Mecklenburg County, State of North Carolina, more particularly described as follows:

BEGINNING at a #5 rebar iron located in a common corner of Lot 73 of NorthCross Downs, Phase 2, Map 2 recorded in Map Book 26 at Page 145 and Lot 15 of Greenfarm Subdivision, Phase n, Map 2, recorded in Map Book 22 at Page 99, said iron being located North 79-22-55 West 58.46 feet from an iron located at a common rear corner of Lots 14 and 15 of said Greenfarm Subdivision map; THENCE FROM SAID POINT OF BEGINNING and running with the rear or southerly lines of Lots 11 through 15, inclusive, of said Greenfarm Subdivision map and crossing Greenfarm Road as shown thereon, South 79-22-55 East 863.75 feet to an iron located at the southeasterly corner of Lot 11 of said Greenfarm Subdivision map, said iron being located in a westerly line of the now or former James F. Blythe property; thence with two lines of the said James F. Blythe property; South 01-59-32 West 551.81 feet to an angle iron and South 42-16-55 East 238.97 feet to a point located in the centerline of a tributary of Torrence Creek; thence with said centerline in 20 calls and distances as follows: (1) South 40-40-30 West 104.56 feet to a point, (2) South 67-10-57 West 22.53 feet to a point, (3) South 39-53-29 West 77.23 feet to a point, (4) South 34-50-09 West 16.61 feet to a point, (5) South 84-33-59 West 40.96 feet to a point, (6) South 29-16-33 West 12.84 feet to a point, (7) South 20-14-50 East 19.91 feet to a point, (8) South 74-39-03 West 23.52 feet to a point, (9) South 38-50-06 West 109.88 feet to a point, (10) South 51-27-21 West 50.16 feet to a point, (I 1) South 83-00-51 West 53.13 feet to a point, (12) South 28-56-00 West 44.33 feet to a point, (13) North 57-59-21 West 20.09 feet to a point, (14) South 63-15-52 West 41.33 feet to a point, (15) South 63-15-52 West 10.74 feet to a point, (16) South 45-32-38 West 13.78 feet to a point, (17) South 87-45-20 West 39.11 feet to a point, (18) South 59-3846 West 47.71 feet to a point, (19) South 65-09-31 West 98.94 feet to a point and (20) South 71-03-22 West 32.59 feet to a point located at the southeasterly corner of the Common Open Space shown on said NorthCross Downs subdivision map; thence with the easterly line of said Common Open Space and along the easterly lines of Lots 60, 61, 65, 66, 68, 69, 70, 71, 72 and 73 of said NorthCross Downs subdivision map. North 13-27-29 West (passing an old axle at 148.55 feet) a total distance of 1,388.80 feet to the point of BEGINNING, and being all of that property as shown on survey thereof by Delta Land Services, Inc., entitled "Boundary Survey John B. Monteith and wife, Gwendolyn H. Monteith" dated April 12, 1995, to which reference is made for a more particular description.

Being the same property conveyed to The Howey Co., Inc. by deed from Gwendolyn H. Monteith recorded in Book 8238 at Page 637.

All references to recorded data are to such in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

EXHIBIT A

Being that tract of land containing approximately 51.074 acres located in Huntersville Township, Mecklenburg County, North Carolina, shown as "PHASE 2 9.642 ACRES +1" and "PHASE 2 41.432 ACRES +/-" on that Boundary Survey by Delta Land Services, Inc. dated April 28, 1995, as last revised on October 26, 1995 (Job No. 9512), which is incorporated herein by reference. Said tract of land is more particularly described as follows:

> BEGINNING at a nail located in the centerline of the right-of-way (100 feet in width) of N.C. Hwy 73 (Sam Furr Road), said nail being located in the northeasterly corner of the property conveyed to The Howey Co., Inc. (herein "Howey Company") by Deed recorded in Book 8218 at Page 296; thence running with said centerline S. 85-31-03 E. 595.50 feet to a nail located at the northwesterly corner of the Lambert Property described in Deed recorded in Book 3661 at Page 820; thence with two lines of the Lambert Property S. 04-23-50 W. 350.50 feet to an iron and S. 26-03-15 E. 59.24 feet to an angle iron & stone; thence with the southerly line of the Lambert Property and continuing with a southerly line of the Hager Property described in Deed recorded in Book 6334 at Page 1866, S. 75-45-11 E. 661.65 feet to an angle iron & stone; thence with a southerly or southwesterly line of the Hager Property, S. 24-43-10 E. 771.23 feet to an iron in the westerly line of the Mecklenburg County Property described in Deed recorded in Book 4680 at Page 656; thence with a westerly line of the Mecklenburg County Property, S. 32-39-25 W. 1,675.98 feet to an iron located at a corner of the Howey Company Property described in Deed recorded in Book 8412 at Page 182; thence with four lines of the said Howey Company Property, as follows: (1) N.27-19-16 W. 334.41 feet to an iron, (2) N. 09-20-09 E. 566.20 feet to an iron, (3) N. 80-39-51 W. 130.00 feet to an iron, and (4) N. 09-20-09 E. 205.10 feet to an iron located at the southeasterly corner of the "Church Tract" described in Deed to Howey Company recorded in Book 8412 at Page 179; thence with four lines of said Church Tract, as follows: (1)N. 09-20-09 E. 125.11 feet to an iron, (2)N. 21-57-47 W. 266.79 feet to an iron, (3) S. 71-22-31 W. 206.07 feet to an iron, and (4) N. 87-48-59 W. 271.72 feet to an iron located in the easterly margin of the Greenfarm Subdivision as shown on plat thereof recorded in .Map Book 21 at Page 200; thence with the easterly margins, extended, of the Greenfarm Subdivisions as shown on plats thereof recorded in Map Book 21 at Page 200 and Map Book 25 at Page 544, N. 02-11-01 E. 1,329.92 feet to a nail located at said BEGINNING point.

Being all of those tracts of land comprised of 9.642 acres and 41.432 acres conveyed to David S. Howey by two serrate Deeds from James F. Blythe and wife, Louise L. Blythe, each dated September 30th ,1998, and duly filed for record.

EXHIBIT A

EXHIBIT "D"

BYLAWS

OF

HAMPTON AT NORTHCROSS HOMEOWNERS ASSOCIATION, INC.

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BYLAWS

OF

HAMPTON AT NORTHCROSS HOMEOWNERS ASSOCIATION, INC.

Article I
Name, Membership, and Definitions

Section 1. **Name.** The name of the Association shall be Hampton at NorthCross Homeowners Association, Inc. (the "Association").

Section 2. Membership. The Association shall have one (1) class of membership, as is more fully set forth in that Declaration of Protective Covenants and Restrictions for NorthCross Downs (this Declaration, as amended, renewed, or extended from time to time, *is* hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II
Association: Meetings, Quorum Voting, Proxies

Section 1. Place of Meetings. Meetings of the Association shall be held at Association Clubhouses or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2. Annual Meetings. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday).

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by at least twenty-five percent (25%) of the Total Association Vote. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the date, time and place where it *is* to be held **and the items on the agenda, including any proposed amendment to the Declaration or Bylaws, the budget, any proposal to remove a Director and matters that shall be approved by the members of the Association and for a special meeting the purpose thereof.** If an Owner wishes notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than thirty (30) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting *by* a member, whether in person or by proxy,

shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. **Voting.** The voting rights of the members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein.

Section 8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or *by* proxy, of twenty-five percent (25%) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 10. **Action Without A Formal Meeting (Annual or Special).** Any action to be taken at a meeting of the members or any action that may be taken at a meeting of the members may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof and such action is consented to by the Declarant it required. Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Section 11. Action by Written Ballot. Any action to be taken at any annual or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot (including by email) to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and, except in the case of the election of directors, provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and, except in the case of the election of directors, the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter (other than election of directors); and specify the date and return address/email address by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary of the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. **Governing Body: Composition.** The affairs of the Association shall be governed by a Board of Directors. The directors must reside in the Community and shall be members or spouses of such members; provided, however, no Person and his or her spouse may serve on the Board at the same time.

Section 2. Deleted.

Section 3. Number of Directors. The Board of Directors shall consist of five (5) members: President, Vice President, Secretary, Treasurer and Committee Liaison.

Section 4. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) Deleted.

(b) At annual meetings of the membership thereafter, directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected; provided, however, the initially elected directors shall serve the remainder of their terms.

(c) The term of two Board of Directors shall be two years (2) elected during odd numbered years. The term of three Board of Directors shall be two years (2) elected during the even numbered years. The members of the Board of Directors shall serve no more than two (2) consecutive terms. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called at which a quorum is present, any one (1) or more of the members of the Board of. Directors may be removed, with or without cause, by a Majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed *by* the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who *is* delinquent in the payment of an assessment for more than twenty (20) days may be removed by a Majority vote of the directors at a meeting, **a** quorum being present.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of **the** membership shall be

held no later than thirty (30) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors, but a minimum of four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director *by* one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) by email notification; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first *class* mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or email notification shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 11. **Waiver of** Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum *is* present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to* transact business, notwithstanding the withdrawal of directors, if any action taken *is* approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by a Majority of the Total Association Vote. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. At regular intervals, the Board shall provide members an opportunity to speak about their issues or concerns. The Board may place reasonable restrictions on the number of person who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

Section 15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered **in** executive session shall first be announced in open session.

Section 16. Action Without A Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors. The action should be brought forth at the next meeting of the directors to be recorded in the minutes.

Section 17. Telephonic Participation. One (1) or more directors may participate in and vote during any regular **or** special meeting of the Board by telephone conference call **or similar** communication equipment by means of which all directors participating **in** the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, **in** way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, **care**, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(a) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening and maintaining of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted *by* it, and bring any proceedings which may be instituted on behalf of **or** against the Owners concerning the Association;

obtaining and carrying insurance against casualties and liabilities, as

provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and **repair** expenses and any other expenses incurred; and

(1) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 19. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice.

Section 20. Association Administrative Proceedings including Hearings regarding Fines and Suspension of Services under N.C.G.S. § 47F-3-102(11) or (12) and N.C.G.S. § 47F-3-107.1.

The Association may conduct any administrative proceedings permitted or provided for under the Declaration, the North Carolina Planned Community Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, to (1) impose reasonable fines for violations of the Declaration, Bylaws, rules and regulations of the Association, or (2) to suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association or during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer.

Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and as provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. In the event the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if the offending Owner should be fined or if privileges or services should be suspended.

If the Board fails to appoint an adjudicatory panel to hear such matters, hearings shall be held before the Board. The offending Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence at the hearing and shall be given 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 more than five days after the decision that the violation occurs. Fines are due and payable immediately at the time of accrual. Owners will be notified of the decision of the Board after the hearing.

Fines imposed shall be assessments secured by liens under N.C.G.S. § 47F-3-116. If it is decided that a suspension of privileges or services should be imposed pursuant §47F-3-102(11), the suspension may be imposed if the amounts due and owing to the Association remain unpaid for a period of 30 days or longer and may be continued without further hearing until the delinquency is paid. If it is decided that a suspension of privileges or services should be imposed pursuant to § 47F-3-102(12), the suspension may be continued without further hearing until the violation is cured.

Article IV
Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and Committee Liaison. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the **first** meeting of the Board of Directors following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will **be** served thereby.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Non-Profit Corporation Act. The President shall interface with the Association Attorney or delegate to the Vice President.

Section 5. Vice President. The Vice President shall act in the **President's** absence and shall **have** all powers, duties, and responsibilities provided for the President when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors including taking attendance and shall have charge of such books and papers as the Board of Directors may direct and shall, **in** general, perform all duties incident to the office of the secretary of a corporation organized **in** accordance with North Carolina Non-Profit Corporation Act.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records including the annual budget and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent **in** such depositories as may from time to time be designated by the Board of Directors. The Treasurer will arrange for a yearly accounting review.

Section 8. Committee Liaison. The Committee Liaison shall maintain ongoing communications with each Committee Chairperson and be responsible for communicating committee actions at Board of Director meetings.

Section 9. Resignation. 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 the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make **it** effective.

Article V
Committees

The Committees of the Association shall be determined by the Board of Directors. Each Committee will be led by a Committee Chairperson(s). Committees shall perform such tasks and serve for such periods as designated and authorized by the Board of Directors. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee.

Article VI
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall **be** determined by resolution of the Board. In the absence of such a resolution, **the** fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, these Bylaws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of North. Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

Section 4. Amendment. The Bylaws may be amended by the Board of Directors and must also be approved by 2/3 of the members voting in person or in proxy at a meeting, or by a majority of the total members, whichever is less, provided, however, that the U.S. Department of Veterans Affairs ("VA") (if it is then guaranteeing any Mortgage in the Community as determined by telephone inquiry to VA) and/or the U.S. Department of Housing and Urban Development ("HUD-) (if it is then insuring any Mortgage in the Community as determined by consulting the current list of approved subdivisions regularly published by HUD and furnished to Mortgage companies) shall have the right to veto material amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

Section 5. Books and Records. The Board of Directors shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. The Board of Directors shall make an annual income and expense statement and balance sheet available to all Lot Owners at no charge and within seventy five (75) days after the close of the fiscal year to which the information relates. A more extensive compilation, review, or audit of the Associations books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the Board or by the affirmative vote of a majority of the Lot Owners present and voting in person or by proxy at any annual or special meeting of the Association duly called for that purpose.

State of North Carolina, County of Mecklenburg

The foregoing certificates) of Marlene G. Young

Wanda T. Hurst

~~Notary(ies) Public is/are certified to be correct.~~

This 4th day of November 9

Deputy Rmiger or Deeds

JUDITH A. GIBSON, SSTs IST DEEps

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