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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
OAK VALLEY

GODFREY, JACOBS AND PORTER  
2631 Reynolda Road  
Winston-Salem, NC 27106

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
OAK VALLEY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 2<sup>nd</sup> day of June, 1994, by Oak Valley Associates Limited Partnership, a North Carolina Limited Partnership (hereinafter referred to as "Declarant") qualified to do business in North Carolina.

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the North Carolina Condominium Act, NC General Statute §47C-1-101, et seq.

Article I  
Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any Neighborhood or third party, become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility. The Area of Common Responsibility shall also include those areas identified in Article IV, Section 1 hereof.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Oak Valley Homeowners Association, Inc., as filed with the Secretary of State of the State of North Carolina.

Section 3. "Association" shall refer to Oak Valley Homeowners Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

Section 4. "Base Assessment" shall mean and refer to assessments levied against all Units in the Properties to fund Common Expenses.

Section 5. "Benefitted Assessment" shall mean assessments levied in accordance with Article X, Section 4 of this Declaration.

Section 6. "Board of Directors" or "Board" shall be the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

Section 7. "By-Laws" shall mean and refer to the By-Laws of Oak Valley Homeowners Association, Inc., attached hereto as Exhibit "B" and incorporated herein by reference, as they may be amended from time to time.

Section 8. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 9. "Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners. The Common Area may include, without limitation, easements, private streets, open space, landscaping, signage and entry features, lakes, ponds, wetlands, streams, swimming pool(s), tennis courts, recreational center, parking areas, playing fields, tot lots, paths and trails, and similar active and passive recreational facilities, among other things; provided, nothing herein shall obligate the Declarant to provide or include any of the foregoing within the Common Area.

Section 10. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction

costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

Section 11. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee pursuant to Article XI hereof. In no event, however, shall such standard be reduced below that standard established by the Declarant as of the termination of the Class "B" Control Period.

Section 12. "Declarant" shall mean and refer to Oak Valley Associates Limited Partnership, a North Carolina Limited Partnership, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibit "A" for the purpose of development and/or sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 13. "Master Land Use Plan" shall mean and refer to the plan for the development of the property described on Exhibit "A", prepared by \_\_\_\_\_ and dated \_\_\_\_\_, as it may be amended from time to time.

Section 14. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 15. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 16. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 17. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 18. "Neighborhood" shall mean and refer to each separately platted section of the developed residential subdivision herein.

Section 19. "Owner" shall mean and refer to one or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.



Section 20. "Participating Builder" shall mean any Person who purchases one or more Units or a parcel or parcels of land within the Properties for the purpose of constructing improvements thereon for later sale to consumers or for further subdivision and development.

Section 21. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 22. "Private Amenities" shall mean certain real property and the improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which may be privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the golf course and related facilities adjacent to the Properties.

Section 23. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 24. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3, of this Declaration.

Section 25. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Association pursuant to Article VIII, Section 2, of this Declaration to subject additional property to this Declaration. Additional property may only be annexed as provided by the terms of this Declaration.

Section 26. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as unimproved land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. In the case of any structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is more recent, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Article II  
Property Rights

Section 1. General. As an appurtenance to his/her Unit and passing with the title to such Unit, every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the right of the Board to limit the number of guests who may use the Common Area, and to adopt other rules regulating the use and enjoyment of the Common Area;
- (c) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation;
- (e) the right of the Association to dedicate or transfer all or any part of the Common Area pursuant to Article XIII, Section 4, hereof;
- (f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) the right of the Board to permit use of any recreational facility situated on the Common Area by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board.

(h) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred pursuant to Article X, Section 5 hereof.

Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Person other than a Participating Builder or developer holding title for the purpose of development and resale.

Section 2. Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in regard to the Private Amenities shall ever be effective without an amendment hereto executed or joined into by the Declarant.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate such a transfer or conversion.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by the respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

Article III  
Membership and Voting Rights

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association. Membership is appurtenant to and inseparable from ownership of a Unit. No Owner, whether one or more Persons, shall have more than one membership per Unit owned. In the event the Owner of a Unit is more than one Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 2. Voting. The Association initially shall have two classes of membership--Class "A" and Class "B":

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section hereof; there shall be only one vote per Unit. Each Class "A" Member shall be entitled personally to exercise the vote for its Unit.

In any situation where a Member is entitled personally to exercise the vote for his Unit and more than one Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. Failure of the Class "B" Member to exercise such power within thirty (30) days of the opening of such a position shall be deemed a waiver of that power, and shall entitle the Class "A" Members to exercise such power. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Article III,

Section 3, of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws;

(ii) when the Declarant no longer owns any portion of the property described on Exhibit "A"; or

(iii) when, in its discretion, the Declarant so determines and declares in a written recorded instrument;

(iv) when, by failure to exercise the rights accorded the Declarant or the Class "B" Member under this Declaration for a period in excess of five (5) years, the Declarant is deemed to have abandoned the development.

Section 3. Neighborhoods. Every Unit shall be located within a Neighborhood as defined in Article I. The Units within a particular Neighborhood may be subject to additional covenants. Such additional covenants shall apply to every Unit within that Neighborhood and shall set forth a general plan of development for that Neighborhood. Such covenants shall be enforceable by each Unit within that Neighborhood and shall be appurtenant to and pass with the title to each Unit in that Neighborhood. The Association shall also be empowered by this Declaration and by the separate Neighborhood covenants to enforce the provisions of those covenants.

#### Article IV Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to:

(a) all landscaping and other flora, parks, structures and improvements situated upon the Common Area, including, without limitation, any swimming pool(s), tennis courts, recreational center, playing field(s), playground(s), bike and pedestrian pathways and trails comprising the Common Area;

(b) landscaping within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit. Owners of Units which are adjacent to any portion of the Common Area on which walls have been constructed shall maintain and irrigate that portion of the Common Area which lies between such wall and the Unit boundary. Owners of Units adjacent to any roadway within the Properties shall maintain driveways serving their respective Units and shall maintain and irrigate landscaping on that portion of the Common Area, if any, or right-of-way between the Unit boundary and the back of curb of the adjacent street.

All maintenance required by this Section 2 shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood pursuant to any additional declaration of covenants applicable to such Unit. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the owner thereof in accordance with Article X, Section 4 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Standard of Performance. Unless otherwise specifically provided herein, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

Article V  
Insurance and Casualty Losses

Section 1. Association Insurance. The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents, or contractors while acting on behalf of the Association.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines after notice and an opportunity to be heard in accordance with Article III, Section 22 of the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Unit Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Article X, Section 4.

All insurance coverage obtained by the Board of Directors, whether obtained on behalf of the Association, shall be governed by the following provisions:

- (a) All policies shall be written with a company authorized to do business in North Carolina which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) All insurance shall be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties 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.

(d) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All property insurance policies shall have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Davie/Forsyth County area.

(f) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

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

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

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

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subjected to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner, or Mortgagee;



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

(vi) a statement that the Association will be given at least thirty days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable. The Association shall also obtain, as a Common Expense, a fidelity bond or bonds, if reasonably available, covering all persons responsible for handling Association funds. The amount of fidelity coverage shall be determined in the Board of Directors' best business judgment but, if reasonably available, may not be less than one-sixth of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Unit(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible). The Association may, but shall not be obligated to, take action to monitor and enforce this covenant, and may require Owners to provide copies of such policies or other evidence of such insurance upon request.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and thereafter shall maintain the Unit in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within the Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other peril to all or any part of the Properties 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 shall 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 paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent of the total Class "A" votes in the Association decide within sixty days after the loss not to repair or reconstruct.

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 said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties shall be cleared of all debris and ruins. Thereafter the Properties shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 1 of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VI  
No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VII  
Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total Class "A" vote in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VIII  
Annexation of Additional Property

Section 1. Annexation Without Approval of Membership. The Declarant shall have the unilateral right, privilege, and option, from time to time at any time until December 31, 2004, to subject to the provisions of this Declaration and the jurisdiction of the Association additional real property adjoining the properties described herein. The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing in the public registry for Davie County, North Carolina, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing two-thirds of the Class "A" votes of the Association present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public registry for Davie County, North Carolina, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of

considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members, subject to any restrictions or limitations set forth in the deed of conveyance.

Section 4. Withdrawal of Property. Subject to the provisions of Article XIV, Sections 2 and 9, the Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to this Article IX, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of minor changes in the boundaries of the Private Amenities or other adjacent parcels, plat revisions, or changes in the Master Land Use Plan, provided such withdrawal does not reduce the total number of Units then subject to this Declaration.

Section 5. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. All additional covenants shall be for the mutual benefit of all Units within the Properties and may be enforceable by any Owner.

Section 6. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" hereof.

#### Article IX Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped

areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless overruled, cancelled, or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

Section 4. Enforcement. The Association shall be authorized to impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities on the Common Area. In addition, the Association, through the Board, in accordance with Article III, Section 22 of the By-Laws, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than thirty days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

The Association, through the Board, by contract or other agreement, shall have the right, but not the obligation, to enforce county ordinances and shall permit the counties to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 6. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 7. Dedication of Common Areas. The Association, acting through the Board of Directors upon two-thirds vote thereof, shall have the power to dedicate portions of the Common Areas to any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in Article XIV, Section 2 of this Declaration.

#### Article X Assessments

Section 1. Creation of Assessments. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, and under the By-Laws, specifically including but not limited to: expenses of maintaining, repairing, replacing, operating and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association; the cost of insurance and fidelity bond coverage obtained pursuant to Article V hereof; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and instruments referenced herein; expenses arising out the Association's indemnification obligations under Article IX, Section 6 hereof; expenses arising out of its responsibilities for architectural control under Article XI hereof,

expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; postage and copying expense; cost of office supplies and equipment necessary or desirable to perform its responsibilities; legal, accounting and other professional fees; and such other expenses as the Board of Directors deems necessary or desirable to keep the Properties in good, clean and attractive condition, and to maintain and enhance property values and marketability of Units within the Properties. Such assessments shall commence at the time and in the manner set forth in Section 7 of this Article.

There shall be three (3) types of assessments: (i) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; (ii) Special Assessments as described in Section 3 below; and (iii) Benefitted Assessments as described in Section 4 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments. This covenant is appurtenant to the land and shall pass to each Owner's successors-in-title.

Base Assessments shall be levied equally on all Units not owned by Declarant subject to assessment. Base Assessments shall be payable in the amount of \$150.00 by purchasers of any Unit taking title in 1994 and in each year subsequent as determined by the Board, pursuant to Section 2 below. Units owned by Declarant shall not be subject to assessment.

Any assessment or installment thereof which is delinquent for a period of fifteen (15) days shall incur a late charge in the amount of four (4%) percent of the principal amount past due. All assessments, together with interest (at a rate determined by the Board from time to time, but not to exceed the lesser of sixteen (16%) percent or the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges (subject to the limitations of North Carolina law), costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and, in the event of a transfer of title, if expressly agreed, 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, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.



The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of any assessments therein stated to have been paid. The Association may require the advance payment of a processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Each Owner, by acceptance of a deed to his or her Unit, acknowledges that all Base Assessments levied hereunder are annual assessments due and payable in advance on the first day of the subsequent fiscal years. Each owner purchasing a Unit directly from the Declarant by acceptance of a deed to his or her Unit acknowledges the obligation to pay the Base Assessment for that calendar year in full upon transfer of title. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, 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 to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared, as provided in Section 6 of this Article.

The Base Assessment to be levied against each Unit for the coming year shall be determined by dividing the total budgeted Common Expenses, including reserves, by the total number of Units subject to the Declaration. In determining the total number of Units subject to the Declaration, the Board shall take into account

the number of Units subject to the Declaration on the first day of the fiscal year for which the budget is prepared and may, in its discretion, take into account, on an adjusted basis, the number of Units reasonably anticipated to be subjected to the Declaration during the fiscal year. The Board, in its discretion, may also consider other sources of funds available to the Association.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty days prior to the beginning of the fiscal year. Any annual increase of the budget in excess of ten percent must be approved at a meeting of the Association by the affirmative vote of two-thirds of the votes cast at such a meeting by the Voting Members. Voting Members representing sixty percent of the total eligible vote of the Association shall constitute a quorum at such a meeting. Should such a quorum not be attained, the quorum requirement at any meeting subsequently convened for such purpose shall be reduced to thirty percent of the total number of eligible votes.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

### Section 3. Special Assessments.

(a) Unbudgeted Expenses. In addition to the Base Assessments and Neighborhood Assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for general Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Voting Members representing at least two-thirds of the total Class "A" votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Costs to Cure Non-compliance. The Association may levy a Special Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any

applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Special Assessments may be levied upon the vote of the Board after notice to the Unit Owner and an opportunity for a hearing.

Section 4. Benefitted Assessments. The Board shall have the power to specifically assess expenses of the Association in the amount of the benefit received against Units receiving benefits, items, or services not provided to all Units within a Neighborhood or within the Properties (1) that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (2) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests.

Section 5. Lien for Assessments. The Association shall have a lien against any Unit to secure payment of delinquent assessments, including interest, late charges (subject to the limitations of North Carolina law), and costs (including attorneys fees). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mechanics' and materialmen's liens under North Carolina law.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Unit. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share

of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments and subject to any approval requirements, as provided in Sections 2 and 3 of this Article.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Unit upon the transfer of title from the Declarant herein to the Unit owner. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide on an annual basis beginning January 1, 1995, and as provided in Section 1, above, with respect to Units purchased from Declarant in 1994.

Section 8. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any.

Article XI  
Architectural Standards

Section 1. General. No construction, which term shall include within its definition staking, clearing, excavation,

grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained as provided below. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 2. Architectural Review. Responsibility for administration of the Architectural Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by two committees, as described in subsections (a) and (b) of this Section 2. The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

(a) Architectural Review Committee. The Architectural Review Committee (ARC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred percent of the Properties have been developed and conveyed to Owners in the normal course of development and sale, the Declarant retains the right to appoint all members of the ARC who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC, who shall serve and may be removed at the discretion of the Board of Directors.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto. Notwithstanding the above, the ARC shall have the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARC.

The MC shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the ARC. In addition, plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Unit visible from outside the Unit shall be subject to approval.

Section 3. Guidelines and Procedures. The Declarant shall prepare the initial design and development guidelines and applications and review procedures (the "Architectural Guidelines") which shall be applicable to all construction activities within Oak Valley. The Architectural Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another, depending upon the location, the unique characteristics, and intended use.

The ARC, acting on behalf of the Board of Directors, shall adopt such Architectural Guidelines at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The ARC shall make the Architectural Guidelines available to Owners, Participating Builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and all such Persons shall conduct their activities in strict accordance with such Architectural Guidelines. In the discretion of the Declarant, such Architectural Guidelines may be

recorded in the public registry for Davie County, North Carolina, in which event the recorded version, as it may unilaterally be amended from time to time by the ARC by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time. All Owners, Participating Builders, and developers shall conduct their activities strictly in accordance with the Architectural Guidelines.

Any amendments to the Architectural Guidelines adopted from time to time by the ARC in accordance with this Section shall apply to construction and modifications commenced after the date of such amendment only, and shall not apply to require modifications to or removal of structures previously approved by the ARC or MC once the approved construction or modification has commenced.

The MC may promulgate detailed application and review procedures and design standards governing its area of responsibility and practice. Any such standards shall be consistent with those set forth in the Architectural Guidelines. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finishing grade elevation. No permission or approval shall be required to repaint in accordance with originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications.

Nothing contained herein shall be construed to limit the right of an Owner to remodel or redecorate the interior of structures comprising a Unit in any manner desired. However, modifications or alterations to the interior of screened porches, balconies, decks, patios, and similar portions of the Unit visible from outside the Unit shall be subject to approval.

In the event that the ARC or MC fails to approve or to disapprove any application within fifty days, or within the specified period of time designated in the Architectural Guidelines, after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 5 below.

Section 4. No Waiver of Future Approvals. The approval of either the ARC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right

to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 5. Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC or MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Association, acting through its directors or the Board's designees, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Special Assessment pursuant to Article X, Section 3 hereof.

Review of all applications and enforcement of all provisions of the Architectural Guidelines shall be conducted reasonably and undertaken in good faith.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and



provisions of this Article and the Architectural Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing, acting through the Board, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC and MC.

Article XII  
Use Restrictions

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, streets, parks, utilities, and sales, business and construction offices for the Declarant, Participating Builders and the Association) as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, guests, invitees and licensees until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

Section 1. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Architectural Review Committee (ARC), except entry and directional signs installed by Declarant. If permission is granted to any Person to erect a sign within the Properties, the ARC reserves the right to restrict the size, color, lettering and placement of such sign. The ARC and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the above, no signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties.

Section 2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors may adopt. No garage shall be permanently enclosed, nor shall the use thereof otherwise be converted, such that the capacity for parking of vehicles therein is reduced below that for which it was originally designed. The Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Neither the Declarant or the Association shall be obligated to provide or designate parking areas for such vehicles. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Article III, Section 22 of the By-Laws.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws 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, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion

of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of two may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall, at all times whenever they are outside a Unit, be confined on a leash held by a responsible person.

Section 5. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it 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 portion of the Properties 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, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. 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 Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. 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 on any part of the Properties.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus

for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties.

Section 8. Clotheslines, Garbage Cans, Tanks, Etc. No clotheslines shall be erected or installed on the exterior portion of any Unit. All garbage cans, above-ground storage tanks, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 9. Subdivision of Unit and Use for Right-of-Way. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association, with the exception that two adjacent owners may subdivide a lot between them, but only one residence shall be built on the combined original Unit and the subdivided portion of any Units. Declarant, however, hereby expressly reserves the right to replat any Unit or Units owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant expressly reserves the right to use any Unit owned by Declarant for public or private right-of-way access to contiguous land.

Section 10. Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

Section 11. Pools. No above-ground swimming pools shall be erected, constructed or installed on any Unit.

Section 12. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties unless prior written approval has been received from the ARC. All sprinkler and irrigation systems shall be subject to approval in accordance with Article XI of this Declaration. Private irrigation wells are prohibited on the Properties. Provided, however, this Section 12 shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property in accordance with Article VIII, Section 1.

Section 13. Tents, Trailers, and Temporary Structures. Except as may be permitted by the Declarant or the ARC during

initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Board, or by the Declarant.

Section 14. Drainage Systems. 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 Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow.

Section 15. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required by the committee having jurisdiction to replace the removed tree with one or more comparable trees of such size and number, and in such locations, as such committees may determine necessary in its sole discretion, to mitigate the damage.

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

Section 17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for power line easements granted prior to the recording of this Declaration, temporary lines as required during construction, and high voltage lines if required by law or for safety purposes.

Section 18. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

Section 19. Lighting. Except for reasonable seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture,

fountains, and similar items must be approved in accordance with Article XI of this Declaration.

Section 21. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof.

Section 22. Building Setbacks. No building or part of a building other than stoops, open porches (without roofs), overhanging eaves, and cornices shall extend nearer the front property line than as permitted by the zoning ordinances of Davie County, North Carolina; however, in no event shall it extend nearer than 40 feet to the front property line. In the event a building setback is indicated on the record plat, then the set back requirement of the recorded plat shall prevail, providing it exceeds the minimum requirement of the zoning ordinance. No building shall be placed more than 20 feet behind the building setback line without approval of the appropriate committee. Modifications on a case-by-case basis may be made by the ARC.

Section 23. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration.

Section 25. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation,

work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

Section 26. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 27. Leasing of Units.

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) General. Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Unit. All leases shall be in writing and shall be for an initial term of no less than six months, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(c) Lease Provisions. Any lease of a Unit in the Properties shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that if such language is not expressly contained therein, then such language shall be deemed incorporated into the lease by existence of this covenant and the lessee, by occupancy of the Unit, agrees to the applicability

of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, By-Laws, and Rules and Regulations. The lessee agrees to abide and comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto. The Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto and is responsible for all violations thereof and resulting losses or damages caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, By-Laws, or a rule and regulation for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any lessee charged with a violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Board, the non-exclusive power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including, without limitation the power and authority to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Unit and the Owner thereof, such being deemed hereby as an expense which benefits the leased Unit and the Owner thereof.

(ii) Use of Common Area. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the



Common Area, including, but not limited to, the use of any and all common facilities and amenities.

Section 28. Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 29. Single Family Occupancy. No Unit shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit.

Section 30. Mailboxes. Standardized mailboxes and/or posts shall be provided at a fee to initial Unit purchasers, and the continuing use thereof shall be mandatory throughout the Property.

Section 31. Acceptance of Streets by North Carolina Department of Transportation (NCDOT). All streets in this development will be constructed as public streets, meeting the standards of the NCDOT for subdivision streets. The Developer has dedicated a right-of-way, as shown on the recorded plat referred to herein, having a width of at least forty (40) feet. The streets have been or will be constructed in accordance with the NCDOT standards, including those relating to grading, roadbed, paving, and draining.

The streets may be accepted by the NCDOT for addition to the State Highway System as state maintained roads upon petition by affected Unit owners when a sufficient number of the Units are individually owned and when there are a sufficient number of occupied Units for each applicable segment of street. Reference is made to the Regulations of the NCDOT for a more complete discussion of procedure regulating the admission of streets to the state system.

Following such a petition, the streets will be reinspected by the NCDOT to insure that they continue to meet all state standards, including condition of right-of-way and drainage ditches and swales, failing which, the streets may not be admitted to the state system.

If the streets are not approved to be admitted to the state system for maintenance, each Unit owner shall make the necessary repairs and/or modifications to the right-of-way adjoining his or her respective Unit within 90 days from receiving notice from

NCDOT. If an owner fails to make the necessary repairs/modifications to the right-of-way adjoining his or her Unit as required by the NCDOT, the Unit owners within the development may, at their option, either themselves or through the services of an attorney, make the required repairs/modifications and invoice the owner for all respective expenses of making said repairs/modifications to the right-of-way adjoining his or her Unit (including legal fees), plus a penalty of 50% of the total cost. If the invoice is not paid within 30 days, a lien may be filed against the Unit. Interest shall accrue on the unpaid balance at the maximum rate permitted by law from the date the lien is filed until paid in full.

Nothing, including but not limited to, walls, fences, gates, timbers, trees, or plants, shall be erected, placed, or permitted to remain in any portion of the street right-of-way or related sight or drainage easements as shown on the recorded plat of this development. No drainage ditch or swale shall be filled, tiled or altered in any way except in accordance with the standards of NCDOT.

All mailboxes within the right-of-way shall be installed in accordance with US Postal Service and NCDOT requirements. Any mailbox improperly installed shall be removed at the owner's expense as stated above.

### Article XIII

#### Easements

Section 1. Easements for Utilities, Landscaping, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association, and the designees of each (which may include, without limitation, Davie County, North Carolina, and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

There are also hereby reserved for the Declarant, the Association, and their designees, access and maintenance easements over affected Units which are traversed by "Landscaping Easements" as shown on a recorded plat of an Oak Valley Neighborhood. Access shall be limited to the area bounded by the landscaping easement.

Section 3. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such Additional Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such Additional Property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the Additional Property. Such agreement shall provide for sharing of costs based on the ratio which the number of residential dwellings on that portion of the Additional Property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Properties and on such portion of the Additional Property.

Section 4. Right of Entry. The Association shall have the right, but not the obligation, to enter any Unit for emergency, security, and safety reasons to perform maintenance pursuant to Article IV hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules and regulations, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, 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. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

Article XIV  
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, 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 Unit 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 Properties or which affects any Unit 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 Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty 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 Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty 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 eligible holders.

Section 2. Special FHLMC Provision. The following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent of the first Mortgagees or the Voting Members representing at least sixty-seven percent of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, convey, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. Other Provisions for First Lien Holders. To the extent possible under North Carolina law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Units to which at least fifty-one percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the eligible holders of first Mortgages on Units to which at least fifty-one percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

Section 4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 3 (a) and (b) of this Article, or to the addition of land in accordance with Article VIII:

(a) The consent of at least sixty-seven percent of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on Units to which at least sixty-seven percent of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven percent of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of eligible holders of first Mortgages on Units to which at least fifty-one percent of the votes of Units subject to a Mortgage appertain, shall be required to materially amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;

- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an eligible holder; or
- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

Section 5. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 7. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or North Carolina law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee who receives notice and 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 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 9. HUD/VA Approval. So long as there is a Class "B" membership and so long as the Department of Housing and Urban Development ("HUD") and/or the U.S. Department of Veterans Affairs ("VA") is holding, insuring, or guaranteeing any loan secured by property subject to this Declaration, the following actions shall require the prior approval of HUD and/or VA, respectively: annexation of additional property, dedication or mortgage of Common Area, merger or consolidation in which the Association is a participant, dissolution of the Association, or material amendment of this Declaration.

Article XV  
Declarant's Rights

This Declaration and the covenants, conditions and restrictions contained herein are intended to promote and maintain a common scheme of development as described in the Master Land Use Plan, as that plan may change during the course of development. This Declaration, and any amendment hereto, whether made unilaterally by the Declarant or by the Association, shall become a part of this common scheme of development and be enforceable uniformly by and against all Units hereunder.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public registry for Davie County, North Carolina. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any additional property in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant and any designated Participating Builder(s) shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant and recorded in the public registry.



in this Article shall terminate upon the earlier of (a) twenty years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XVI  
General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarant may amend this Declaration for any reason, subject to the approval requirements set forth in Article XIV, Section 9 hereof.

Except as otherwise specifically set forth above or elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent of the total Class "A" votes in the Association, including seventy-five percent of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV hereof shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public registry of Davie County, North Carolina.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

No amendment may exempt any individual Units from the requirements of this Declaration or in any other way defeat the common scheme of development for Oak Valley which is set forth in this Declaration.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. 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 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 5. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent of the Voting Members. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Association to the contrary, a Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five percent of all Members of the Neighborhood represented by the Voting Member. 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 X 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 or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 6. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the

extent that the provisions of North Carolina law cannot be waived by agreement, the North Carolina law shall control.

Section 7. Use of the Words "Oak Valley". No Person shall use the words "Oak Valley" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Oak Valley" in printed or promotional matter where such term is used solely to specify that particular property is located within Oak Valley and the Association shall be entitled to use the words "Oak Valley" in its name.

Section 8. Compliance; Enforcement. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

Section 9. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Unit, such Owner shall give the Board of Directors at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of assessments, notwithstanding the transfer of title to the Unit.

Section 10. Shareholders Agreement/Irrevocable Proxy. To the extent necessary to permit the exercise of all rights and powers set forth herein, this Declaration shall be deemed to constitute a Shareholders Agreement. In addition, all Members constitute and appoint the President, as chairman of the Board of Directors, as their duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval of the exercise by the Declarant of the rights or powers set forth in this Declaration. This proxy may be exercised by affirmative vote on any resolution authorizing such action submitted at a duly called meeting of the Association or by the execution of a consent to action in place of a meeting. This proxy is coupled with an interest and is irrevocable.

IN WITNESS WHEREOF, Oak Valley Associates, Limited Partnership, has caused this Declaration of Covenants, Conditions and Restrictions for Oak Valley to be executed this 28<sup>th</sup> day of June, 1994.

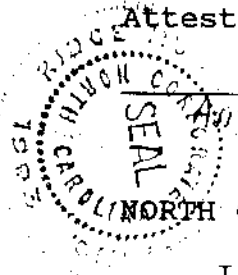
OAK VALLEY ASSOCIATES, LIMITED PARTNERSHIP

By: RIDGE RUN PROPERTIES, Inc., General Partner

(SEAL)

By: [Signature]  
President

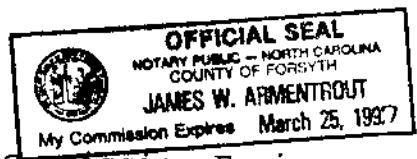
Attest:



Kimberly R Hicks  
Secretary

NORTH CAROLINA, DAVIE COUNTY

I, James W Armentrout, a Notary Public for Forsyth County, North Carolina, do hereby certify that Kimberly R Hicks personally came before me this day and acknowledged that she is Atty Secretary of RIDGE RUN PROPERTIES, Inc, a North Carolina corporation, and that by authority duly given as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested to by Kimberly R. Hicks as its Atty Secretary. Witness my hand and notarial seal, this the 28<sup>th</sup> day of June, 1994.



[Signature]  
Notary Public

My Commission Expires: 3/25/97

NORTH CAROLINA, DAVIE COUNTY

The foregoing or annexed certificate(s) of James W. Armentrout Notary Public of Forsyth County is (att) certified to be correct. This the 30 day of June, 1994.

HENRY L. SHORE, Register of Deeds

BY: Martha D Smith  
Deputy - ~~REGISTER~~

Probate Fee \$2.00 paid

EXHIBIT "A"

OAK VALLEY

- Deed Book 168, page 568
- Deed Book 168, page 780
- Deed Book 168, page 788
- Deed Book 169, page 210
- Deed Book 169, page 212
- Deed Book 169, page 214
- Deed Book 169, page 216
- Deed Book 169, page 218
- Deed Book 169, page 331
- Deed Book 169, page 361