

Prepared by: W. Travis Barkley
and Return to: Barkley Law Offices, P.C.
111 Windel Drive, Suite 201
Raleigh, NC 27609

NORTH CAROLINA
DURHAM COUNTY

FOR REGISTRATION REGISTER OF DEEDS
WILLIE L. COVINGTON
DURHAM COUNTY, NC
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MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
GATEWOOD FOREST

Made by:
Westfield Homes of North Carolina, Inc.

KNOW ALL MEN BY THESE PRESENTS, that this Master Declaration of Covenants, Conditions and Restrictions for Gatewood Forest (the "Declaration") is made and entered into on this _____ day of January, 2001 by Westfield Homes of North Carolina, Inc., a North Carolina corporation (hereinafter referred to as the "Declarant").

RECITALS

1. Declarant is the owner of the real property described in Article One of this Declaration and desires to create thereon a residential community (the "Community") together with any private streets, roads, bike paths, footways, Open Spaces, Common Areas, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any Recorded Plat (as hereinafter defined) (sometimes referred to collectively herein as the "Facilities") for the benefit of the Community.

2. Declarant desires to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and Common Area and, to this end, desires to subject the real property described in Article One, and any additions thereto, to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof.

3. The Declarant's present intention, stated here for information of present intent only and not as warranty or representation of a future fact, is to develop the Community with residential units of different styles, designs and construction. These may include, by way of example and not limitation, condominium units, townhouse dwellings, and individually owned single family lots upon which residences may be built, including patio homes or zero lot line homes.

4. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Community, to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Community properties and Facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and spending the assessments and charges hereinafter created.

5. Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina, prior to the

sale of any Lot or Improved Lot (as hereinafter defined) in the Community, a non-profit corporation to be known as The Gatewood Forest Community Homeowners Association, Inc., for the purpose of exercising the functions aforesaid.

DECLARATION

NOW THEREFORE, the Declarant declares that the real property described in Article One, and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth, and furthermore that the "covenants and restrictions" hereof shall hereby entirely replace, supersede, and be in lieu of the terms, conditions, and covenants of the Original Declaration as if this Declaration has been recorded originally in place of the Original Declaration.

ARTICLE ONE: PROPERTY SUBJECT TO THIS DECLARATION

Section 1.1 Existing Property. The real property which is, and shall be, held, used, transferred, sold, conveyed and occupied subject to this Declaration (the "Existing Property") is located in Durham County, North Carolina, and is or will be commonly known as Gatewood Forest, and is depicted as Parcels 632H-04-001; 632H-04-002; 632H-04-003; 632H-04-004; 632H-04-005; 632H-04-006; 632H-04-012; 632H-04-013; 632H-04-014; 632H-04-015; 632H-04-016; 632H-04-017 containing in total 4.706 acres, more or less, all as shown on the Boundary Plat (hereinafter defined); and being thirteen lots more or less.

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

a. Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that are contiguous to the Existing Property, as added to under the terms hereof, but such right shall cease to exist on January 1, 2010. Such additions must not be of more than 500 acres, must be approved by the City of Durham and may not conflict with legal declarations recorded in the Office of the Register of Deeds of Durham County.

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

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

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

c. Mergers. Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights,

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

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

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

ARTICLE TWO: ADDITIONAL DECLARATIONS

Additional covenants and restrictions applicable to only certain Lots, Improved Lots, Common Properties or Limited Common Properties within The Properties may be established from time to time in the form of a neighborhood declaration ("Neighborhood Declaration") pursuant to Section 8.5 hereof.

Neighborhood Declarations executed by the Declarant or the Association may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Neighborhood burdened by the Neighborhood Declaration in order to reflect the different character and intended use of such Neighborhood, but they shall not in any event create a reduction in annual assessments due hereunder. Unless a Neighborhood Declaration is executed by the Declarant or the Association, however, a Neighborhood Declaration may not relax or waive any standards or rules enunciated in this Declaration.

Certain obligations of the Association established herein may be delegated by the Association to an association created in connection with a Neighborhood Declaration (a "Neighborhood Association") if there is a reasonable nexus between the obligation delegated and the property encumbered by the Neighborhood Declaration and if the Neighborhood Association assumes responsibility for such obligation. Neighborhood Associations and Neighborhood Declarations shall be established in accordance with the provisions of Section 8.5 hereof.

ARTICLE THREE: DEFINITIONS

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

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

"Association" shall mean and refer to The Gatewood Forest Homeowners Association, Inc.

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

"Boundary Plat" shall mean and refer to that certain plat of survey originally recorded in Book of Maps 150, Page 151, Durham County Registry, and later rerecorded in Book of Maps 151, Pages 91-92, Durham County Registry, which survey depicts all of the property to be encumbered and benefited by this Declaration at the time of the recording hereof, but additional property may be added hereunder as provided for in this Declaration.

"Builder" shall mean and refer to a person or entity who in the regular course of business purchases Lots and becomes the Owner of such Lots solely for the purpose of constructing improvements thereon for resale to their successors and assigns and not for the purpose of residing in such improvements. No successor or assignee of Builder shall have any rights or obligations of a Builder hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law. The rights and obligations set forth herein of a Builder shall cease when all of the Lots owned by such Builder have been purchased and settled on by an Owner or Owners other than Builder or Declarant, or as otherwise provided in Section 10.13.

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

"City Attorney" shall mean and refer to the City Attorney or the Deputy City Attorney of the City of Durham, North Carolina, or anyone authorized by either of them to act on their behalf.

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

"Common Expenses" shall mean and refer to:

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

whole.

- e) Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation.

"Common Property(ies)" or "Common Area(s)" shall mean and refer to those areas of land described or referred to as "Common Property", "Common Properties", "Common Area", "Common Areas" or "Open Spaces" in any declaration of covenants, conditions and restrictions to which The Properties are submitted or subjected by the Declarant, or shown on any Recorded Plat, executed by the Declarant and any other owner of such areas of land, of The Properties and labeled thereon as "Common Property", "Common Properties", "Common Area", "Common Areas" or "Open Spaces", or shown on a Recorded Plat as private streets, roads, bike paths, or pedestrian walking easements (together with all improvements located thereon), which are a part of The Properties and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots, Dwelling Units, or Improved Lots. The Common Properties shall also include any stormwater device that serves more than one (1) Lot, any utility line located outside public street rights-of-way and public utility easements, and serving more than one (1) Lot, and any shared facility or property required to be shared by the Durham City Code. The Common Properties shall not include the Limited Common Properties. The Common Properties shall include Recreational Facilities, if any, constructed by the Declarant or the Association, as described in Article Twelve hereof.

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

"Declarant" shall mean and refer to Westfield Homes of North Carolina, Inc., a North Carolina corporation its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Durham County Registry.

"Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of

ownership) located within The Properties and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family detached homes, single family attached homes, such as townhouses and condominium units, and patio or zero lot line homes. Each unit in a Multi-Family Dwelling constitutes a Dwelling Unit. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated.

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

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

"FHA" shall mean and refer to the United States Federal Housing Authority.

"HUD" shall mean and refer to the United States Department of Housing and Urban Development.

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

"Landscape Buffer Area" shall have the meaning assigned to it in Section 6.28 of this Declaration.

"Landscape Plan" shall have the meaning assigned to it in Section 6.11 of this Declaration.

"Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Areas or any valid charge against the Limited Common Properties as a whole. Such expenses shall be assessed against those Lots or Dwelling Units having the exclusive or special rights in the use or enjoyment of the Limited Common Properties.

"Limited Common Property(ies)" or "Limited Common Area(s)" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements (including without limitation any common entrances to a Multi-Family Dwelling) shown on or designated as "Neighborhood Common Property", "Neighborhood Common

Properties", "Neighborhood Common Area", "Neighborhood Common Areas", "Limited Common Property", "Limited Common Properties" "Limited Common Area", "Limited Common Areas" or "Limited Open Space" on any Recorded Plat, and intended for the use of the Owners of particular Lots, Improved Lots or Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units, Improved Lots or Lots so designated on the Recorded Plats. Common elements of a condominium are also "Limited Common Areas".

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

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

"Member" shall mean a member of the Association and shall refer to an Owner in The Properties.

"Multi-Family Dwelling" shall mean and refer to any Improved Lot located within The Properties intended for use and occupancy as more than one Dwelling Unit and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by limitation) condominiums. Where appropriate by context, the term shall include the improvements and the real property on which the improvements are situated, which real property would be the common element of all Dwelling Units on a Multi-Family Dwelling Lot on which condominiums are located.

"Neighborhood" shall mean and refer to a contiguous or closely related set of Lots, or Improved Lots, in The Properties that are to be governed by a common set of design standards and served by and governed by a Neighborhood Association formed for the express purpose of governing and serving such Lots and Improved Lots and any Limited Common Area in connection therewith in accordance with the terms of

a Neighborhood Declaration.

"Neighborhood Assessment" shall mean and refer to the assessment(s) and charges levied by a Neighborhood Association.

"Neighborhood Association" shall have the meaning assigned to it in Article Two of this Declaration.

"Neighborhood Declaration" shall have the meaning assigned to it in Article Two of this Declaration.

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

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

"Durham City Code" shall mean and refer to the Code of Ordinances of the City of Durham, North Carolina, as amended from time to time.

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

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

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

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

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

"Gatewood Forest" shall mean and refer to that community consisting of single family lots and residences, multi-family parcels and recreational and supporting facilities, in Durham County, North Carolina, in the City of Durham, situated on approximately 4.706 acres of land more particularly shown on the Boundary Plat as Parcels 632H-04-001; 632H-04-002; 632H-04-003; 632H-04-004; 632H-04-005; 632H-04-006; 632H-04-012; 632H-04-013; 632H-04-014; 632H-04-015; 632H-04-016; 632H-04-017; and being 13 lots more or less. The Declarants may make additions to the Existing Property in accordance with the provisions of this Declaration.

"VA" shall mean and refer to the United States Department of Veterans Affairs.

ARTICLE FOUR: GENERAL PROVISIONS

Section 4.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit, or, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended in accordance with the provisions of Article 13 hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof. The terms and conditions of this Declaration may also be amended as to a particular Neighborhood, but only in strict accordance with the provisions of Article Two hereof.

Section 4.2 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and

addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Durham County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Dwelling Unit to be examined. Notice to any one of the Owners, if title to a Lot or Dwelling Unit is held by more than one, shall constitute notice to all Owners of that Lot or Dwelling Unit.

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

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

Section 4.5 Cluster Unit Development. The Properties are part of a cluster unit development, approved by the City of Durham, in which residential density transfers are permitted; therefore, even though some Lots or Improved Lots may appear to contain enough land area to construct additional Dwelling Units or create additional Lots or Improved Lots, prior density transfers approved within the cluster unit development may, in fact, preclude approval by the City of Durham of additional Dwellings or further subdividing of Lots or Improved Lots.

Section 4.6 Density. The Community is zoned R-10 with a metro park overlay. The Existing Property at the time of the recordation of this Declaration consists of approximately 4.706 acres. Based on the existing zoning of the area, the maximum density for the area without rezoning is approximately 30 Dwelling Units. The maximum area allowed to be developed hereunder includes an additional 28.202 acres, and would have an overall maximum density of approximately seven Dwelling Units per acre and 250 total Dwelling Units if an additional 28.202 acres is in fact

annexed and all of such area is subject to zoning of R-10. Density may exceed the density prescribed for such property in some portions of the Community so long as the total density for the entire Community does not exceed the amount allowed by the applicable zoning of the Community.

ARTICLE FIVE: ARCHITECTURAL CONTROL

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

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

principal office of the Association.

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

Furthermore, notwithstanding the foregoing, the Committee may (1) set restrictions that conflict with those established generally for The Properties which apply to only a set of Lots or Improved Lots comprising a Neighborhood and/or (2) delegate to the Neighborhood Association its authority to approve Plans and vary the setbacks as described above for the Lots or Improved Lots in such Neighborhood.

Section 5.3 Architectural Control Committee.

a) Membership: Right of Declarant to Act as Committee with Respect to Initial Construction.

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

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the Committee responsible for the review, approval, and monitoring of construction of improvements. This right of the Declarant pursuant to this section shall cease during times when the Declarant does not own any of the property comprising any portion of The Properties, or January 1, 2010, whichever event shall first occur. Following the determination that a Lot qualifies as an Improved Lot, any requests for modifications or alterations of improvements in fact constructed on an Improved Lot or for the construction

of additional improvements on an Improved Lot shall be the responsibility of the full Committee, which need not be the Declarant if it so directs. The Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the initial construction of improvements as the Committee, as hereinabove described.

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

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

Any Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the

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

The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner of the Lot or Dwelling Unit as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Dwelling Unit and shall be in addition to any fees due for processing any requests for approval.

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

c) Application of this Article.

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

(ii) Repainting, reroofing, minor

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

(iii) As to any property governed by a Neighborhood Declaration that includes an architectural control provisions that affirmatively states that this Section of this Declaration shall not apply to properties in such Neighborhood, this Section shall have no force and effect, and the Neighborhood Association's architectural control committee shall instead serve as the Committee, as specified in and under the terms of the Neighborhood Declaration.

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

Section 6.1 Permissible Uses. No Lot or Improved Lot shall be used except for residential purposes allowed under applicable zoning regulations (with the exception of any sales center or model home constructed or used by the Declarant, his agent or any builder who has received the prior written permission of Declarant). Specifically, no "Model Home" or "Open House" type of operation shall be allowed within The Properties other than with Declarant's explicit written permission, notwithstanding, Declarant's right to operate such "Model Home" or "Open House," at its discretion, anywhere within The Properties at any time prior to January 1, 2010. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit or a Multi-Family Dwelling and its accessory building(s), which shall comply with any applicable zoning regulations and the requirements of Articles Five and Six of this Declaration.

Section 6.2 Division of Lots: No Time Sharing.

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

created within the old shared Lot.

In addition, all Owners are hereby advised that The Properties comprise a cluster unit development, approved by the City of Durham, in which residential density transfers are permitted. Therefore, even though some Lots or Improved Lots may appear to contain enough land area to construct additional Dwelling Units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude approval by the City of Durham of additional Dwelling Units or of further subdivision of Lots or Improved Lots.

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

Section 6.3 Water and Sewer Facilities. Water and sewer treatment services shall be provided through the City of Durham. Water and sewer services shall be extended to all Lots and Improved Lots, prior to transfer of title of such Lot or Improved Lot by the Declarant to any Owner other than a builder who had acquired title for the purpose of constructing improvements thereon with no intention of occupying the improvements.

Section 6.4 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground or against or in the building in the case of a Multi-Family Dwelling. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time

known or unknown, to The Properties on, in, under and over the private streets or roads and over any Lot or Improved Lot, and over such areas as are so identified on any recorded plats of The Properties or shown on any Site Plan for The Properties on file with and approved by the City of Durham. In addition, the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the easements reserved, Declarant also reserves the right for installation, maintenance and repair of bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class II membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property.

The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot or Improved Lot for which it deems such easement is unnecessary for the efficient development and operation of The Properties, but it may do so only until one year after Class II membership has last terminated. In addition, the Declarant may delegate its authority, until one year after Class II membership has last terminated to release any of the easements reserved herein as to several Lots or Improved Lots to a Neighborhood Association established to govern such Lots and Improved Lots.

There is also reserved by Declarant, for itself, and its successor or assigns, and for the State of North Carolina, within The Properties, a perpetual easement to enter any Lot or Improved Lot at reasonable times and hours of the day in order to do necessary groundwater monitoring, to include the installation and pumping of groundwater wells, or for the purposes of remediation of groundwater contaminants.

Section 6.5 Minimum Square Feet in Dwelling Unit. The Association reserves the right to establish minimum square foot standards for Dwelling Units from time to time and of varying amounts in various portions of The Properties. Such standards shall not be retroactive. The Association may also delegate its right to set a minimum square foot standard for

a given Neighborhood of The Properties to a Neighborhood Association for such area if one has been created.

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

Section 6.7 Committee Approval of Plans and Other Prohibitions.

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

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

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

d) Any exterior air-conditioning or heating equipment and any natural gas storage facility must be screened from public view by a screening material or shrubbery approved by the committee.

e) Downspouts and gutters must be constructed so as not to promote the erosion of the soil of any Lot, Improved Lot or Dwelling Unit.

f) Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Lot or Improved Lot or interfere with the quality of the night environment.

g) No mobile homes or trailer homes shall be allowed or approved by the Committee as the residence on any

Lot or Improved Lot, and no mobile home or trailer home shall be allowed to remain on any Lot or Improved Lot. "Mobile homes" shall not include modular homes that do not rest on wheels once placed permanently on the Lot or Improved Lot for the purpose of living therein.

Section 6.8 Garbage and Storage Receptacles. Except as required by any appropriate governmental authority, each Owner shall provide receptacles for garbage (and recyclables if such a program is in place in the City of Durham), and all garbage receptacles, tools and equipment for use on a Lot or Improved Lot, shall be placed in a screened area in accordance with reasonable standards established by the Committee to shield same from general visibility from roads and neighbors abutting the Lot or Improved Lot. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other mineral or toxic product will be allowed anywhere in The Properties.

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

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

Section 6.11 Landscape Plan: Landscaping. As part of the Plans package submitted by an Owner to the Committee for approval of such Owner's Plans for the initial construction of improvements, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the location and specifications for all terraces, walkways,

driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and the specifications for other fixtures and structures envisioned to be constructed as part of the Landscape Plan.

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

Each Dwelling Unit and Multi-Family Dwelling shall be maintained consistently with the Landscape Plan approved for it by the Committee. All material changes to the Landscaping Plan or the landscaping installed on a Dwelling Unit or Multi-Family Dwelling shall be first approved by the Committee. The Committee shall have the authority to create landscaping guidelines, which may vary by Neighborhood, with which each Dwelling Unit and Multi-Family Dwelling shall comply.

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

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

During the construction of any improvement to a Lot or Improved Lot in The Properties, the Lot or Improved Lot, roads, bike paths, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common

Areas, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

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

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

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

leash.

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

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

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

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

Section 6.20 Pavement of Joint Walkways and Driveways. Any joint walkway or driveway shown on any Recorded Plat of The Properties, if and when improved, shall be improved and maintained by the Owners of the Lots or Improved Lots on which such joint walkway or driveway abuts. If one of the Lot Owners fails to maintain its portion of the driveway, the other Owner may, at his sole discretion, undertake this maintenance work and shall have a right of contribution for such maintenance work. Each Lot Owner shall have the right to construct the entire joint walkway or driveway.

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

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

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

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

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

Section 6.25 Docks and Piers. No docks, piers, or elevated

or suspended walkways of any kind, or any other manmade structure whatsoever, shall be constructed in or out over any lake, pond, waterway, off-property wetland, other water course, Common Properties, Limited Common Properties or any other place, by any one other than the Declarant and the City of Durham. To the extent that any of such facilities are constructed by the Declarant or the City of Durham; the constructing entity may limit the time or nature of the use of the same.

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

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

Section 6.28 Landscape Buffer Areas. Any portion of The Properties designated as "Private Landscape Easement" or "Private Landscape Buffer" area on a Recorded Plat, even if also designated on such Recorded Plat or on any other Recorded Plat as Common Area, a Lot or Lots, any other use, or a mix of uses, so long as still in the sole ownership of the Declarant or the Association, shall be thereafter governed by the provisions of this Section. Any land so designated may be referred to in this Declaration as "Landscape Buffer Area" or "Landscape Buffer Areas", as the context requires.

At the option of the Association, Landscape

Buffer Area may be used for landscaping to provide an aesthetically pleasing and uniform look in the Community. Landscape Buffer Area may not be used for driveways, parking or other paved or gravel uses without the prior consent of the Association. Landscape Buffer Area shall not be used for active on-site uses of the Owners, such as playgrounds, walkways, rest areas, or other recreational areas, without the prior consent of the Association. The Association may landscape Landscape Buffer Areas, or require landscaping of the Landscape Buffer Areas by the Owners thereof, with grass, bushes, trees and other vegetation; may improve the Landscape Buffer Areas with decorative fencing, entry statements and other improvements identifying or otherwise enhancing the Community; and may allow in Landscape Buffer Areas the installation of street lighting, underground utilities, and, in appropriate cases in the sole discretion of the Association, well-screened utility boxes and the like. The Association may establish rules from time to time governing the use of Landscape Buffer Areas that are generally in conformity with the spirit and intent, in the opinion of the Association, of this Section. Expenses incurred by the Association in connection with the Landscape Buffer Areas shall constitute Common Expenses.

Any area designated as a right-of-way dedication area on any Recorded Map may be treated by the Association as Landscape Buffer Area, until such area has been paved as a roadway, and the Association may maintain such areas in accordance with the provisions hereof except the provision restricting the paving of such area.

ARTICLE SEVEN: ADDITIONAL RIGHTS RESERVED TO DECLARANT

Section 7.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Article One, for the purpose of removing any portion of The Properties which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots or Improved Lots then subject to the Declaration by more than 10 percent and does not create any zoning nonconformities. Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn, if not the Declarant, and, if required, the HUD, the FHA or the VA.

Section 7.2 Right to Develop. The Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of

the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, restoring the Common Area to its original condition, to the extent such repair and restoration is reasonably practicable.

Every person that acquires any interest in The Properties acknowledges that The Gatewood Forest is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such person holds an interest, or (b) changes in the site plan filed with the City of Durham in connection with The Properties as it relates to property outside the Neighborhood in which such person holds an interest. With the approval of the City of Durham, and subject to such terms and conditions as the City of Durham may impose, Declarant shall have the right without the consent or approval of the Owners, to add Common Area, increase the number of Dwelling Units, change Dwelling Unit types, and withdraw real property from the development.

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

Section 7.4 Right to Redesignate Certain Property. The Declarant, until one year after the last termination of Class II membership, hereby reserves for itself and its successors and assigns the right to redesignate property types or boundary lines shown on a Recorded Plat by recording a new Recorded Plat showing such changes and executed by the Declarant or its successor or assigns and any Owners of property redesignated or for which the boundary line is thereby changed. Except as limited herein

or by City Code, Owners may recombine, add or delete lots, and adjust lot lines and the total number of their lots, and such resulting lots will, without any consent of the Declarant or the Association, constitute "Lots" hereunder.

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

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

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

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

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

- i. Declarant has sold and closed the sale of 84% of all Lots and Improved Lots within The Properties, or
- ii. January 1, 2010.

If the Class II membership has been terminated or has expired and subsequently additional properties owned by the Declarant become subject to this Declaration pursuant to Section 1.2 prior to the date stated in subsection (ii) above, the Class II membership shall immediately be reinstated as of the date such additional properties become

Subject to this Declaration and shall not terminate except in accordance with subsection (i) and (ii) above. Following the termination of Class II membership, the Declarant shall become a Class I member.

Section 8.3 Rights and Responsibilities of the Association. Subject to the provisions set forth in this Declaration, the Association has exclusive management and control of the Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto.

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

- a) maintenance of the Common Properties;
- b) management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Properties or located upon the Common Properties so as to keep all of the foregoing, in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- c) all landscaping of the Common Properties;
- d) maintenance of adequate public liability insurance, in an amount not less than \$1,000,000 per occurrence, insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of 80%, for the benefit of the Association with respect to the Common Properties;
- e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Properties; and
- f) maintenance of private streets and recreational and other facilities located on the Common Properties; and
- g) payment of assessments for public and private capital improvements made to or for the benefit of the Common Properties.

The Declarant is responsible for construction of streets and roads within The Properties. The Association

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

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

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

The Association may acquire, hold, exchange and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Durham City Code, this Declaration, the Association's Articles of Incorporation or the Bylaws.

The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing use and operation of the Common

Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of The Properties.

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

If a Neighborhood Association fails to properly maintain, repair, replace, landscape, insure, or otherwise keep up the Limited Common Properties for which it was assigned responsibility, the Association may at its sole discretion perform such duties and assess the costs thereof against all Lots and Dwelling Units in a Neighborhood as Special Individual Assessments in accordance with the provisions of Section 10.5 hereof. The Association shall first provide 30 days' written notice to the Neighborhood Association and the Owners of all Lots or Dwelling Units in the Neighborhood of its intention to perform such duties and charge the Owners for the cost thereof, and it shall so perform the duties and charge the Owners for the cost thereof, and it shall so perform the duties and charge the Owners for the cost thereof if the duties are not fully performed by the Neighborhood Association at the end of the thirty-day period.

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

Section 8.4 Limits on Litigation of the Association. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Members. This Section shall not apply, however, to (a) actions brought by the

Association to obtain injunctive relief to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided in Sections 10.1, 10.4, 10.5, and 10.9, and (c) proceedings involving challenges to ad valorem taxes. This Section shall not be amended unless such amendment is made by the Declarant or is approved by a vote of seventy-five percent (75%) of the Members.

Section 8.5 Establishment of Neighborhood Associations.

a) Formation of a Neighborhood Association.

A non-profit Neighborhood Association may be formed by the Owners of all Lots or Dwelling Units in the Neighborhood intending to be governed thereby and under a Neighborhood Declaration to be created in connection therewith. An agent or representative of the Owners may be elected to form and run the Neighborhood Association, but all Owners of property to be governed by the Neighborhood Association must agree to the formation of the Neighborhood Association before the Neighborhood shall be governed by the Neighborhood Association or the Neighborhood Declaration created in connection therewith.

b) Governance of the Neighborhood

Association. A Neighborhood Association shall be governed by bylaws, which shall be modeled upon the Bylaws and agreed upon by a majority of the Owners of the property to be governed by the Neighborhood Association.

c) Recordation of a Neighborhood

Declaration. A Neighborhood Association shall not govern the Owners of a Neighborhood until a Neighborhood Declaration encumbering the Neighborhood is recorded in the Durham County Registry. The Neighborhood Declaration shall be executed by all Owners of the property in the Neighborhood to be encumbered thereby before being recorded and effective.

ARTICLE NINE. PROPERTY RIGHTS IN THE COMMON PROPERTIES

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

in and to all of the Common Properties and the Facilities. The foregoing easements shall be appurtenant to and shall pass with the title to every Lot, Improved Lot, or Dwelling Unit in The Properties.

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

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

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

a) The Association may mortgage the Common Properties with the consent of at least 2/3 of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meeting. In the event the Association votes to mortgage all or any part of the Common Properties, the rights of the mortgagee must be subordinated to the rights of the Owners and the Association.

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

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

are met:

- (i) written notice of the exchange is given to all Members except in cases where the exchange is done to eliminate encroachment
- (ii) after notice is given, if required, the Association approves the exchange,
- (iii) the exchanged properties and other considerations are of like value and utility,
- (iv) the acreage and configuration of the remaining open space (including real property to be received by the Association in such exchange) equals exceeds the requirements of the Durham City Code, and
- (v) the exchange is approved by the Planning Director of the City of Durham.

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

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

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

b) the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Properties, including the designation of strips of Common Properties that are no greater than 25 feet in width and which are not required for access to other Common Properties to be designated as Landscape Buffer Areas to be used in accordance with the provisions of Section 6.28 of this Declaration, and to limit the number of guests, to regulate

hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Facilities or Recreational Facilities or the peace and tranquility of adjoining residents;

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

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

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

f) Any greenway or park deeded to the City of Durham shall be made accessible to the general public.

Section 9.5 **INTENTIONALLY OMITTED**

Section 9.6 Private Roads. In the development of The

Properties, the Declarant may construct certain private streets or roads within The Properties connecting parcels of The Properties to public rights of way. The Owners of those Lots and Improved Lots bordering such private roads shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads. In no case shall the City of Durham be responsible for failing to provide any emergency or regular fire, police or other public service to the Community or the Owners, their guests or tenants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association or the Owners. In no case shall the City of Durham or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 9.7 Limited Common Property.

a) Certain portions of the Common Areas may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Area may include entry features, recreational facilities, landscaped medians and cul-de-sacs, roadways not necessary to provide other Lots or Improved Lots with access to public streets, lakes and other portions of the Common Areas within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood expense allocated among the Owners in the neighborhood(s) to which the Limited Common Area is assigned.

b) The Association may, upon approval of the Neighborhood Association for the Neighborhood(s) to which any Limited Common Area is assigned, permit Owners in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, subject to the Durham City Code, which fees shall be used to offset the Neighborhood expenses attributable to such Limited Common Area.

c) The Declarant may initially designate Limited

Common Areas and assign the exclusive use thereof in the deed conveying such property to the Association or on a Recorded Plat.

d) Limited Common Areas may be redesignated as Common Areas by deed to the Association from a Neighborhood Association or by designation on a Recorded Plat prior to the conveyance of any Lot in the Neighborhood from the Declarant.

Section 9.8 Perpetual Access Easement Over Adjoining Lots.

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

Section 9.9 Greenway.

Notwithstanding any other provisions of this Declaration, the Association, Owners, Members, tenants of Members, guests or invitees of Members, or families of Members shall not, within any portion of the Common Area or Limited Common Area which is greenway area dedicated to the City of Durham (and is so designated on a Recorded Plat), without the prior written consent of the City of Durham (site plan approval and the issuance of grading permits, for instance, deemed hereunder to be written consent to the development of such areas):

- a) Grant easements of any nature whatsoever;
- b) Remove any trees or vegetation;
- c) Erect gates, fences or other structures;
- d) Place any garbage receptacles;
- e) Fill or excavate;
- f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation

recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Durham may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City of Durham and may enter into such agreements with the City of Durham as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE TEN: COVENANT FOR PAYMENT OF ASSESSMENTS

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

a) annual assessments or charges as herein or in the Bylaws provided,

b) special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and

c) Special Individual Assessments, as defined and described in Section 10.5.

d) working capital assessments of One Hundred Dollars (\$100.00), due and payable by the grantee at the time such Lot or Improved Lot is conveyed by the Declarant, and due and payable again by the grantee's grant of the Lot or Dwelling Unit if the grantee of the Declarant is a builder who did not live in the improvements it constructed or caused to be constructed on such Lot.

The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and

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

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

a) improvement, maintenance, and replacement of any of the Association's Common Properties including, without limitation, the Facilities and Recreational Facilities;

b) payment of the Common Expenses;

c) implementation and enforcement of proper maintenance of exteriors of Dwelling Units, Multi-Family Dwellings and related improvements on Improved Lots in The Properties, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Sections 11.1 and 11.2 of this Declaration;

d) in the discretion of the Association, improvement, maintenance, and replacement, repair, landscaping, insuring or otherwise keeping up of any of the Limited Common Areas when the Neighborhood Association responsible for such duties has failed to do so;

e) establishment of capital replacement reserves; and

f) acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Properties, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Properties, the procurement and maintenance of insurance related to those Common Properties, its recreational facilities and use in accordance with the

Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 10.3 Assessment of Uniform Rates Within Different Categories or Forms of Ownership. Both annual and special assessments shall be fixed at uniform rates for each Dwelling Unit and vacant Lot within The Properties. Except as specified in Sections 10.12 and 10.13, there will be no difference between assessments as to vacant Lots, or between assessments as to Dwelling Units, except that the Owner(s) of some Dwelling Unit(s) may be subject to an assessment by a Neighborhood Association for the maintenance, improvement and replacement of any Limited Common Properties located on or adjacent to the Improved Lot on which such Dwelling Unit is located.

Section 10.4 Special Assessments for Capital Improvements.

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

b) In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives a threat to persons or to property, without the consent of the Members. The amount of such Assessment, however, may not exceed \$300.00 per Owner.

Section 10.5 Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular

Lot, Improved Lot or Dwelling Unit rather than on all Lots, Improved Lots, Dwelling Units or types of Lots, Improved Lots or Dwelling Units in The Properties, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws, or, in accordance with the provisions of Section 8.3 hereof, the pro rata share apportioned to such Lot, Improved Lot or Dwelling Unit of the expenses incurred by the Association in maintaining Limited Common Properties for which the Neighborhood Association governing the Neighborhood to which the Lot, Improved Lot or Dwelling Unit belongs has failed to properly maintain, repair, replace, landscape, insure, or otherwise keep up, all of the foregoing of which shall comprise "Special Individual Assessments".

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

At the first meeting called as provided in Section 10.4, the presence at the meeting of Members, or of proxies, entitled to cast a third of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in Section 10.4, and the required quorum at any such subsequent meeting shall be one-third (1/3) of the required quorum of each class of Member at the preceding meeting, provided that no such subsequent meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

Section 10.7 Date of Commencement of Annual Assessment: Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in quarterly, semiannual, or annual installments. The payment of the regular annual Assessment by Owners shall commence as to each Lot, Improved Lot or Dwelling Unit, on the first day of the month following the conveyance of that property by the Declarant. The first regular annual Assessment shall be adjusted according to the number of months remaining in the

calendar year. The Board shall fix the amount of the annual Assessment at least fifteen (15) days in advance of each regular annual Assessment period. Written notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific Assessment has been paid. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance.

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

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

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

Section 10.9 Effect of Non-Payment of an Owner's Assessment: The Personal Obligation of the Owner: the Lien: Remedies of Association. If the Assessments of an Owner are not paid within ten (10) days following the date due (being the dates referred to in Section 10.7), then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot(s), Improved Lot(s) or Dwelling Unit(s), as appropriate, which shall bind such Lot(s), Improved Lot(s) or Dwelling Unit(s), as appropriate, in the hands of the then-Owner, his heirs, devisees, personal representatives,

successors and assigns. The personal obligation of the then-Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Lot, Improved Lot or Dwelling Unit, as appropriate) unless expressly waived by the Board.

If the Assessment(s) is not paid within thirty (30) days after the delinquency date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot(s), Improved Lot(s) or Dwelling Unit(s), as appropriate, and there shall be added to the amount of such Assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Association pursuant to authority of the Board. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the delinquency date, which late fees shall be in addition to the other changes described herein.

Section 10.10 Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust. The lien on an Owner's property of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot(s), Improved Lot(s) or Dwelling Unit(s), subject to Assessment. The subordination shall not relieve any Lot(s), Improved Lot(s) or Dwelling Unit(s), from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Lot, Improved Lot or Dwelling Unit shall not affect any lien for Assessments. However, the sale or transfer of a Lot, Improved Lot or Dwelling Unit that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior

to such sale or transfer. No such sale or transfer shall relieve a Lot, Improved Lot or Dwelling Unit from liability for any assessments thereafter becoming due, or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

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

a) all Common Properties as defined in Article Three of this Declaration;

b) all Limited Common Properties as defined in Article Three of this Declaration; and

c) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. (Homestead exemptions shall not be considered an exemption.)

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

Section 10.12 Declarant's Obligations for Assessments. As long as and whenever the Declarant owns 16% or more of the Lots and Improved Lots in The Properties for which no certificate of occupancy has been issued by the City of Durham, the Declarant's obligation for Assessments on unsold Lots or Dwelling Units subject to this Declaration will be limited to the difference between the actual operating costs of the Association and the Assessments levied on the existing Members other than the Declarant. In no event, however, will the Declarant be required to make a deficiency contribution in any amount greater than the Builder Rate (defined below) on unsold Lot(s) or Dwelling Unit(s) owned by Declarant. Whenever the Declarant owns less than 16% of the Lots and Improved Lots in The Properties, Declarant shall pay Assessments at the Builder Rate for each Lot or Improved Lot owned by the Declarant for which no certificate of occupancy has been issued by the City, and the Declarant shall not have any obligation to make a deficiency contribution.

Section 10.13 Builders Obligations for Assessments. Notwithstanding anything to the contrary in Section 10.3 or Section 10.7, the annual Assessments on Lots or Dwelling

Units owned by Builders shall accrue annually at a rate equal to fifty percent (50%) of the rate applicable to Owners other than the Declarant (such discounted rate herein called the "Builder Rate"). As soon as a Multi-Family Dwelling is fully constructed and a certificate of occupancy has been issued for the building, the Builder thereof shall pay the Builder Rate for each completed Dwelling Unit on that Improved Lot. One year after the date of the issuance of a certificate of occupancy for any Improved Lot assessed at the Builder Rate, the Assessments for such Improved Lot shall begin accruing at the rate applicable to other Owners (other than the Declarant), and the Builder Rate shall no longer apply to such Improved Lot. Also, once the clubhouse described in Article Twelve has been completed and is in operation, the Builder Rate shall terminate, and the annual Assessments levied on all Builders shall be made at the rate applicable to other Owners (other than the Declarant) rather than at the Builder Rate.

Section 10.14 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from Declarant, the maximum annual Assessment shall be Four Hundred Eighty and No/100 Dollars (\$480.00) per Lot or Dwelling Unit, as applicable. From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the annual Assessment each year shall be no more than 10% of the previous years' Assessment, unless ~~two-~~ ~~10%~~ ^{1/3} ~~thirty~~ or more of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than 10% more than the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described here or determined by the duly called meeting as described above. The limitation in the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to (1) a merger or consolidation in which the Association is authorized by law to participate, (2) as an incident to any additions to The Properties or submission of additional property pursuant to Section 1.2(b) of this Declaration, or (3) in connection with the addition of Recreational Facilities to The Properties pursuant to Article Twelve hereof.

Section 10.15 Neighborhood Assessments Separate from Master Assessments. Owners are hereby reminded that Assessments described hereunder are different from and in addition to any and all assessments established in any Neighborhood Declaration affecting their property, and the

levying and payment of Assessments pursuant to this Declaration does not diminish, replace, or alter the levying and payment of assessments by and to a Neighborhood Association as described in a Neighborhood Declaration.

ARTICLE ELEVEN: EXTERIOR MAINTENANCE AND INSURANCE

Section 11.1 Exterior Maintenance. After thirty (30) days written notice to an Owner and the applicable Neighborhood Association if any, specifying any required maintenance, the Association shall have the right but not the obligation to provide (a) maintenance upon any Lot or Improved Lot and (b) maintenance upon any Dwelling Unit that is subject to Assessments under Article Ten hereof. Such maintenance includes (but is not limited to) painting, repairing, replacing and care of roofs, gutters, downspouts, removal of signs in violation of this Declaration, and exterior improvements on any Dwelling Unit. Such maintenance as to a vacant Lot may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

Section 11.2 Assessment of Cost on Exterior Maintenance. The cost of any such maintenance shall be assessed against the Lot, Improved Lot or Dwelling Unit, as appropriate, upon which such maintenance is done and shall be treated as a Special Individual Assessment pursuant to Section 10.5 hereof, and shall be a lien against any such Lot, Improved Lot or Dwelling Unit as heretofore defined and limited, and a personal obligation of the Owner, and shall become due and payable in all respects as provided herein.

Section 11.3 Maintenance of Dwelling Units. Each Owner of a Dwelling Unit within The Properties, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

a) to build, repair or restore such Dwelling Unit in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Dwelling Unit; and

b) to keep the Dwelling Unit in good repair as required by this Declaration or by the Bylaws.

Section 11.4 Townhouses. Maintenance of the exteriors of townhouses located in The Properties shall be governed by a Neighborhood Declaration recorded for the purpose of governing, among other things, such townhouses. This

Section shall in no way limit the rights of the Association to maintain the exterior of townhouses located in The Properties under certain circumstances as provided in this Declaration, however.

ARTICLE TWELVE: RECREATIONAL FACILITIES

The Declarant may (but shall not be obligated to) construct recreational amenities, including without limitation tennis court(s), pool(s), clubhouse(s) serving the pool or tennis court, walking trails or bike paths, in any areas shown as "Common Area," "Present Recreational Facilities" or "Other Residential Facilities" on any Recorded Plat or in any areas deeded or to be deeded to the Association for recreational common area (the areas so designated and the improvements erected thereon referred to herein as the "Recreational Facilities"). Any such Recreational Facilities shall comply with all requirements of the Durham City Code and shall be provided for the benefit of all Owners of Lots, Improved Lots or Dwelling Units, their tenants and guests within the Existing Property and to other owners of Lots, Improved Lots or Dwelling Units within other additions submitted to this Declaration, and their tenants and guests. The Recreational Facilities shall be maintained as part of the Common Properties out of assessments imposed on all Owners who have the right of access to and the use of the Recreational Facilities in accordance with the provisions of Article Nine. The Board shall have the right to form an affiliated association (the "Operator") which may be a separate corporation or a division of the Association and assign to it the responsibilities of maintenance and operation of the Recreational Facilities on a non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Board may deem reasonably necessary. The Operator shall maintain and operate such portions of all Recreational Facilities as are designated to be maintained and operated by such Operator for the benefit of every Owner in good standing with the Association. The Association (by action of its Board) or the Operator, as the case may be, may require that all assessments hereunder be current in order for any Owner to enjoy the use of the Recreational Facilities. Other than the aforementioned right to use such Recreational Facilities as a tenant or guest of an Owner, nonresident memberships or fees paid by the general public shall not be permitted. The Operator may impose reasonable regulations regarding the use of any such Recreational Facilities to insure accessibility, safety, harmony and preservation of any such Recreational Facilities. The Association reserves the right to revoke an assignment made

by it to an Operator and to assume the operation of any such Recreational Facilities, and to impose special fees, charges or assessments against the Owners with respect thereto. The cost of the management, operation, maintenance, repair, servicing, replacement and renewal of the Recreational Facilities shall be deemed Common Expenses as to all Owners. For a period of one year after Class II membership has last terminated, the Declarant may increase Assessments by up to an additional \$5.00 per month to help fund the maintenance, operation, repair, servicing, replacement and renewal of Recreational Facilities not previously included in the Assessments budget.

ARTICLE THIRTEEN: AMENDMENT TO DECLARATION

Section 13.1 Owner/Member Initiated. An amendment to this Declaration may be proposed upon a majority vote of the Owners, with only one Owner per Lot or Dwelling Unit voting, whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than fifty (50) days from date of notice. It shall be required that each Owner be given written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than fifty (50) days before the date set for such special meeting. Such notices shall be made in compliance with the provisions of Section 4.2 hereof, and after made in compliance therewith, shall be deemed to be properly given. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) or more of the votes of the Members entitled to vote in order for such amendment to become effective (with the votes being calculated as provided in Section 8.2). At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of the Association pursuant to a form substantially similar to the form attached as Exhibit A, stating that the amendment

was duly adopted and approved by the requisite percentage of Owners. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Durham County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

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

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

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

Section 13.3 **INTENTIONALLY OMITTED**

Section 13.4 When Effective; Recording; Title Searching.
An amendment to this Declaration that complies with the provisions of Section 13.1 or Section 13.2 shall be effective when recorded in the Durham County Registry. The amendment shall be indexed under the name of the Declarant or its successor, the Association or its successor, or the Owners of the property in The Properties. The failure of the amendment to be indexed under all of the foregoing shall not invalidate such amendment so long as the amendment has been indexed under at least one of the foregoing. Anyone searching title on Lots, Improved Lots or Dwelling Units in The Properties should search under the names of the foregoing to discover amendments to this Declaration that may have occurred after the Lot, Improved Lot or Dwelling Unit has been conveyed to an Owner from the Declarant.

ARTICLE FOURTEEN: **INTENTIONALLY OMITTED**

ARTICLE FIFTEEN: **INTENTIONALLY OMITTED**

ARTICLE SIXTEEN: VA, FHA, OR HUD APPROVAL

In the event that any Owner hereafter finances its Dwelling Unit through a loan guaranteed or insured by the VA, the FHA or the HUD, or Dwelling Units within The Properties are approved by the VA, the FHA or the HUD as being eligible for such loans, then, until all Class II Membership ceases to exist and be converted to Class I Membership as provided in Article Eight hereof, the approval of the VA, the FHA or the HUD shall be obtained prior to: (i) the annexation of additional property to The Properties subject to this Declaration, (ii) dedication of additional Common Properties other than Common Areas or Common Properties designated on existing plats of The Properties, and (iii) amendment of this Declaration.

ARTICLE SEVENTEEN: CAPTIONS, INTRODUCTIONS AND GENDER

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


ARTICLE EIGHTEEN: SEVERABILITY AND GOVERNING LAW

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

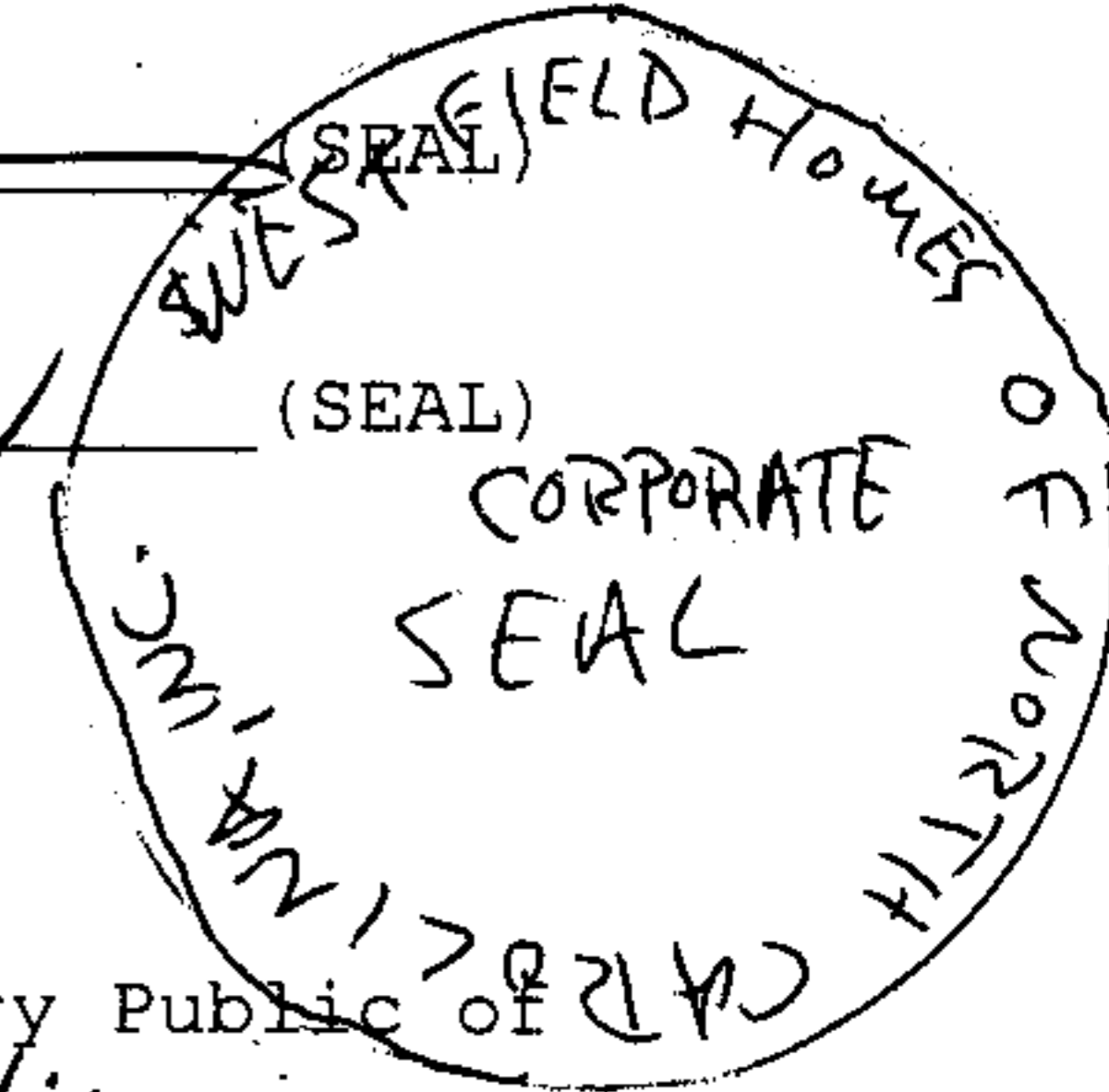
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed under seal as of the date first above written.

OWNER OF EXISTING PROPERTY:

WESTFIELD HOMES OF
NORTH CAROLINA, INC., a North
Carolina corporation (SEAL)

By:  (SEAL)

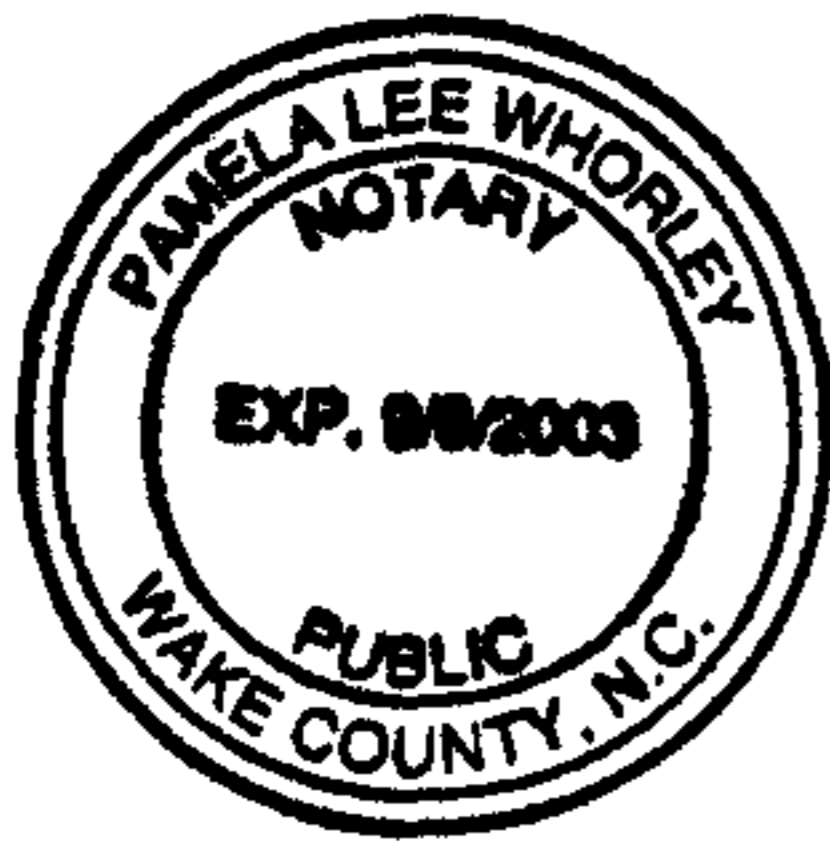
ATTEST:
By:  (SEAL)
Secretary



STATE OF North Carolina
Wake COUNTY

I, Pamela Lee Wharley, a Notary Public of Wake County, State of North Carolina, do hereby certify that Paulette Bragg, Secretary of Westfield Homes of North Carolina, Inc., a North Carolina corporation, personally came before me this day and acknowledged the due execution of the foregoing instrument by John W. Schlenger as its President as his/her act and deed and as the act and deed of the Corporation, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and notarial seal, this 2nd day of April, 2001.



Pamela Lee Whorley
Notary Public

(NOTARY SEAL)
My Commission Expires:
9/8/2003

EXHIBIT A
CERTIFICATION OF VALIDITY OF
MASTER DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE VILLAGES OF TRYON

By the authority of its Board of Directors,
Gatewood Forest Community Homeowners Association, Inc.,
hereby certifies that the foregoing instrument has been duly
adopted and approved by the requisite percentage of Owners
of and lenders on Lots in Gatewood Forest Community and is,
therefore, a valid amendment to the existing covenants,
conditions and restrictions of Gatewood Forest Community.

As of the 2nd day of April, 2001.

GATEWOOD FOREST COMMUNITY
HOMEOWNERS ASSOCIATION, INC.

ATTEST:
Paulette Bragg
Secretary
(Corporate Seal)

By: [Signature]
President

STATE OF North Carolina)
COUNTY OF Wake)

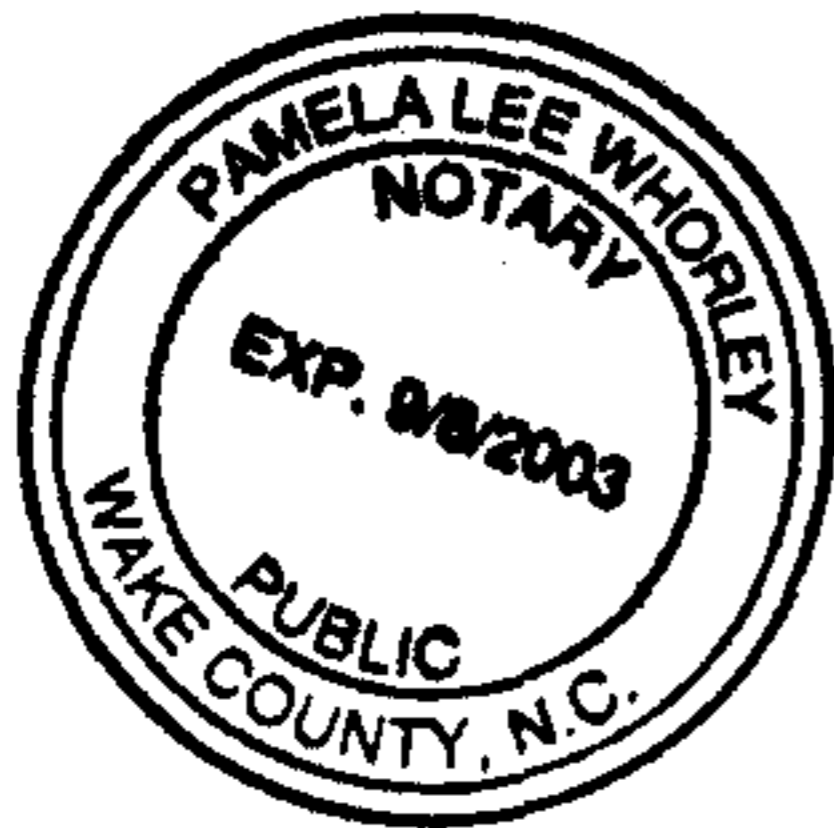
I, Pamela Lee Whorley, a notary
Public hereby certify that Paulette Bragg
personally came before me this day and acknowledged that
he/she is the _____ Secretary of GATEWOOD FOREST
HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit
corporation, and that by the authority duly given and as the
act of said corporation, the foregoing instrument was signed
in its name by its _____ President, sealed with its
corporate seal and attested by him/her as its _____
Secretary.

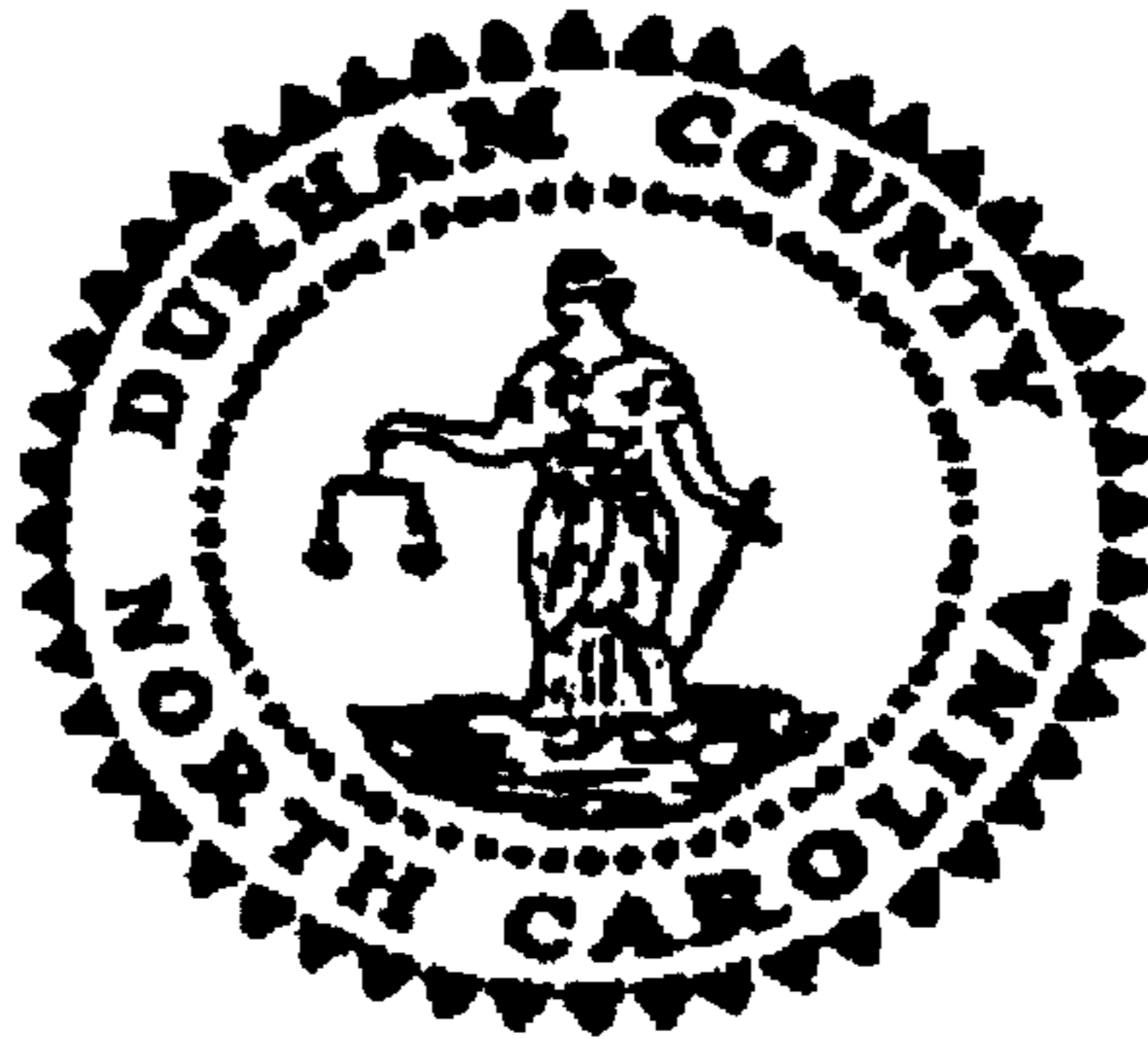
WITNESS my hand and notarial stamp or seal, this 2nd day
of April, 2001.

Pamela Lee Whorley
Notary Public

My commission expires:

9/8/2003
(NOTARIAL SEAL)





WILLIE L. COVINGTON
REGISTER OF DEEDS , DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

Filed For Registration: 05/21/2001 09:25:32 AM

Book: RE 3088 Page: 383-438

Document No.: 2001021103

R-C 57 PGS \$116.00

Recorder: GAIL BAKER

State of North Carolina, County of Durham

The foregoing certificate of PAMELA LEE WHORLEY Notary is certified to be correct. This 21 ST of May 2001

WILLIE L. COVINGTON , REGISTER OF DEEDS By: Carol A. Jenkins
Deputy/Assistant Register of Deeds



2001021103