

NORTH CAROLINA
DURHAM COUNTY

DECLARATION OF PROTECTIVE COVENANTS
AND CONDITIONS FOR HOMEPLACE IV,
SECTION ONE, RECORDED IN PLAT BOOK 117,
PAGE 93, DURHAM COUNTY REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by HOYING HUFF, INC., a North Carolina corporation, hereinafter referred to as the "Declarant;"

WITNESSETH: THAT WHEREAS, the Declarant is the owner of certain property lying within Durham County, North Carolina, more particularly described as Homeplace IV, Section One, as shown on a map recorded in Plat Book 117, page 93, Durham County Registry; and

WHEREAS, said property is subject to a Declaration of Covenants and Restrictions of the Woodcroft Community Association and Woodcroft Company, a North Carolina recorded in Book 1165, page 994, Durham County Registry, and to a Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Woodcroft recorded in Book 1166, page 1, Durham County Registry (collectively referred to herein as the "Woodcroft Declaration").

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose

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of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to THE HOMEPLACE IV TOWNHOMES ASSOCIATION, INC., its successors and assigns.

Section 2. "Property and Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property and amenities, if any, located thereon, private drives, owned by the Association for the common use and enjoyment of members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land containing a single townhome shown upon any recorded map of a portion of the properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to HOYING HUFF, INC., and its successors and assigns to whom

the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 8. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 9. "Building" shall mean and refer to a multi-unit residential structure, constructed or erected on the Property.

Section 10. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 11. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses of administration, maintenance, repair, or replacement of the Common Areas;

(c) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws:

(d) Expenses agreed by the members to be Common Expenses of the Association;

(e) Expenses for maintenance of the townhomes private streets as provided in this Declaration;

(f) Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;

(g) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;

(h) Unpaid assessments resulting from the purchase of a townhome at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

Section 12. "Amenities" shall mean the facilities, if any, constructed, erected or installed on the Common Areas.

Section 13. "Woodcroft Association" shall mean and refer to Woodcroft Community Association, Inc., its successors and assigns.

Section 14.. "Woodcroft Declaration" shall mean and refer to that Declaration of Covenants and Restrictions of the Woodcroft Community Association and the Woodcroft Company, a North Carolina Partnership, recorded in Book 1165, Page 994, Durham County Registry, as amended and to that Declaration of Rights, Restrictions and Affirmative Obligations and Conditions Applicable to All Property in Woodcroft recorded in Book 1166, page 01, Durham County Registry as amended.

Section 15. "Declaration" shall mean and refer to this Declaration of Protective Covenants and Conditions.

Section 16. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a Lot within the Property and constituting a part of a Building.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Annexation of additional Property shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any.

Section 2. Annexation by Declarant. If within 5 years of the date of incorporation of this Association, the Declarant should develop additional lands within the boundaries of the following tract, such additional lands may be annexed to said Properties without the assent of the Class A members:

Being all of the property described on Exhibit "A" attached hereto and incorporated herein by reference, and all property within a one mile radius of the boundaries of the property described on Exhibit "A".

Section 3. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the Durham County Registry a Declaration of Annexation, duly executed by the Declarant if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the

Association or any other person or entity shall be necessary to accomplish the annexation except the appropriate governmental authority having jurisdiction if required by its ordinances.

Section 4. Conveyance of Common Area Upon Annexation. Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed, as set forth in Article V, Section 3 of this Declaration.

Section 5 Mergers. Upon merger or consolidation of the Association with another association, as provided in the Articles of Incorporation of the Association, its property, assets and liabilities, and all rights duties and obligations established by this Declaration may, by operation of law, be transferred to the surviving or consolidated association or in the alternative the property, assets and liabilities and all rights, duties and obligations of another association may, by operation of law, be transferred to this Association as the surviving corporation pursuant to the merger. The surviving association may administer all property brought within its jurisdiction by the merger pursuant to any covenants and restrictions affecting such property.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to this Declaration, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot.

ARTICLE IV

VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article III; provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article II, Section above, or

(b) on December 31, 1993.

Section 2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment.

Every member shall have a right and easement of enjoyment in and to the Common Area, including the rights of ingress and egress, and such easement shall be appurtenant to and shall

pass with the right to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the assent of members entitled to cast two-thirds (2/3) of the votes of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property unless prohibited by law, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility or to any person, corporation or other private entity, if permitted by applicable local ordinances, for such purposes and subject to such conditions as may be agreed to by the Members. The rights of such transferee shall be subordinate to the rights of the homeowners to ingress and egress over the Common Area if the only reasonable means of ingress and egress to a Lot is across the Common Area being dedicated or transferred. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to

every Member not less than 30 days nor more than 60 days in advance.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that, prior to the conveyance of the first Lot in Section One as shown on a map recorded in Plat Book 117, Page 93, Durham County Registry, it will convey fee simple title to the Common Area shown on the aforementioned map to the Association, free and clear of all encumbrances and liens, except utility and drainage easements and easements to governmental authorities. Similarly, the Declarant will convey to the Association Common Areas shown on recorded maps as they are developed and annexed in the future until all Common Areas, as shown on plans approved by the appropriate governmental authority having jurisdiction have been conveyed to the Association.

Section 4. Parking Rights. The Association may regulate all parking, including, but not limited to the parking of vehicles, boats, trailers, airplanes, motor homes and other such items on the Common Area. No boats, trailers, campers, motor homes, trucks, airplanes or tractors owned by a member, his guests, or family members

shall be parked within the right of way of any public or private street in or adjacent to Townhomes; nor shall any of these be regularly parked on the Properties except in areas designated by the Association. The Association shall from time to time adopt appropriate rules for the temporary parking of these items on the Properties.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and every other owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges which are common expenses;
- (b) special assessments for capital improvements; and
- (c) special assessments for purchase and reconstruction of townhomes as hereinafter provided.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements

against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment became due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents of Homeplace at Steeplechase, Phase IV; enforcing the covenants and the rules of the Association; improving and maintaining the Common Areas, including private drives, and paying all Common Expenses.

Section 3. Amount of Assessment.

(a) Initial Assessment. To and including December 31, 1988, the annual assessment shall not be in excess of \$600.00 per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Directors. From and after December 31, 1988, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, to an amount which may not exceed the

previous year's assessment (or the previous year's revised assessment as determined pursuant to subparagraph (c) below) plus ten (10%) percent.

(c) Increase by Members. From and after December 31, 1988, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to an increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment; Reserve Fund. The Association is required to set the annual assessments high enough to enable the Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas. The fund shall be maintained out of the annual assessments for Common Expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set the annual assessment high enough to cover all current costs and

expenses of the Association, any accrued debts, and reserves for future needs.

(e) Decrease of Assessment. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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 costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment proposed by the Association shall have the assent of two-thirds (2/3) of the votes 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, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Special Assessments for the Purchase and Reconstruction of Townhomes. In the event that any townhome located on the Property is substantially destroyed by fire or other hazard, the owner shall give written notice to the Association within thirty (30) days following such

destruction of whether he intends to repair or reconstruct the townhome; and if the owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the townhome. For purposes of this section "substantially destroyed" shall mean that the costs of replacement or repair equals at least fifty percent (50%) of the appraised value of the improvements on the lot before they were damaged. If the owner elects not to repair or reconstruct the townhome, the Association shall have the first option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of thirty (30) days following notice of the owner's election not to repair or reconstruct.

(a) Exercise of Option. The Board of Directors shall appoint a committee or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, realtors, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of

the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the townhome.

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all members within seven (7) days following submission of the committee report. The special meeting of members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to members. Upon an affirmative vote of at least sixty-six and two-thirds (66-2/3%) of each class of membership present and voting, the Board will be authorized to purchase and reconstruct the townhome and to assess all lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the townhome. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate.

Such an assessment shall be in addition to, and not in lieu of, the annual assessments provided for in Section 2 and the special assessment provided for in Section 4 of this Article.

(b) Determination of Value. The owner of the townhome shall convey marketable title thereto to the

Association upon payment to the owner by Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these three appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

(c) Application of Insurance Proceeds. The owner of the Townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the lot, the purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) Failure to Exercise Option. If the

Association does not exercise the purchase option herein provided for, the owner may retain the lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family townhome unit. The reconstructed or repaired townhome unit shall be substantially identical to the destroyed townhome unit, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(e) Retention by Owner. If a townhome is not

habitable by reason of damage, and the owner gives notice of his election to repair or reconstruct the townhome, the obligation of the owner to pay annual assessment installments shall not be suspended. In the event a townhome is damaged or destroyed, or the owner does not begin repair or reconstruct within thirty (30) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the owner, unless the Lot is thereafter acquired by the Association.

(f) Reconstruction by the Association. Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; provided, however, that only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of the Townhome, and no other portion of the Property shall be pledged, hypothecated, mortgaged, deeded in trust or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no member shall be required to become personally obligated therefor.

The Association shall hold title to the Lot and improvements for the benefit of all Members. The Board may lease or sell the Lot and improvements upon such terms and conditions as it, in its discretion, deems most advantageous to the Members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessment, liens, encumbrances, and obligations on or secured by the lot; (2) to the maintenance, upkeep, and repair of the townhome; (3) to payment or repayment to the members, pro rata, of the special assessment, if any, for purchase and reconstruction of the townhome; and (4) to the general expenses of the Association. In the event the Lot

is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the lot; (2) to payment or repayment to the members, pro rata, of the special assessment if any, for purchase and reconstruction of the townhome; and (3) to the general expenses of the Association. Any payment or repayment to members of the special assessment may be in cash or may be applied to the annual assessment due or to become due.

(g) Application of Declaration and Bylaws. Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed shall be subject to the provisions of this Declaration and the Woodcroft Declaration and to the Bylaws of this Association and the Woodcroft Association.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a monthly basis or less frequently, in the discretion of the Board of Directors.

Section 7. Quorum for Any Action Authorized Under Sections 3, 4 and 5. At the first meeting called, as provided in Section 3, 4 and 5 of this Article, the presence

at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in sections 3, 4 and 5 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 8. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the later of these two events:

(a) the Lot becomes subject to this Declaration;
or

(b) the appropriate official of the appropriate local government issues a certificate of occupancy or its equivalent stating that the Townhome constructed on the Lot is substantially complete and available for occupancy.

The first assessment shall be adjusted according to the number of months then remaining in that fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of

Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Assessments by Declarant.

(a) After the commencement of assessment payments as to any Lot, the Declarant shall be required to pay twenty-five (25%) percent of the annual assessment for each Lot it owns; however Declarant covenants and agrees to pay the full amount of the annual assessment for each such Lot it owns on which there is located an occupied Townhome.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contributions shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of the contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the

Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 10. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days may incur a late charge in an amount as the Board may from time to time determine. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the highest rate then permitted by the regulations of the Federal Housing Administration (FHA) and the regulations of the Veterans Administration (VA); provided, however, that if the highest rate permitted by FHA and VA are not the same, the interest rate shall be the lower of rates permitted by these two agencies. The Association may bring an action to collect the assessment against the owner personally obligated to pay the assessment, and interest, costs, late payment charges and reasonable attorney's fees of any such action shall be added to the amount of such assessment. If any law permits the

filing of a lien and the foreclosure of such lien or other similar action, as a method of enforcement of the Association's right to collect assessments, the Association may use such remedy. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of such owner's Lot.

Section 11. Subordination of Lien to Mortgages.

The lien of the assessments including interest, late charges, costs and attorney fees provided for herein shall be subordinate to the lien of any first mortgage. Any sale or transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed common expenses collectible from all lots, including the lots acquired pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof.

Section 12. Two Months Assessments to be

Collected at Closing. At the closing of each sale by the Declarant of a Lot a sum shall be collected from the purchaser equal to the total regular annual assessment applicable to such Lot for the succeeding two months and such sum shall be contributed to the general operating fund

of the Association to be used in the manner specified for annual assessments. This contribution shall not be considered an advance against assessments to become due.

ARTICLE VII

EXTERIOR MAINTENANCE

The Association shall provide maintenance of Common Areas (and all amenities and structures located therein, including but not limited to private drives) and exterior maintenance upon each Townhome which is subject to assessment hereunder, as follows: Stain and/or paint all exteriors, replace roofs, replace, repair and care for walks, trees, shrubs, grass and other such exterior improvements and landscaping, and clean and repair gutters. Such exterior maintenance shall not include glass surfaces.

Any owner who fences, encloses or screens by plants or structures the rear portion of his Lot (which fence, enclosure and screen shall require the prior approval of the Association), may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the Townhome, the remaining yard space, or the Common Area. No such maintenance by an owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may

revoke the owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. The owner shall not plant any vegetation (specifically including, but not limited to flowers, trees, shrubs, vegetables, vines and moss) in front of his townhome except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its owner, or his family, tenants, contract purchasers, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, or smoke, as the forgoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, or for the purpose of correcting, repairing or alleviating any emergency condition provided for in Article XI, Section 5, (but only if such would normally be an expense of the lot owner), the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhomes upon the property and placed on the

dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty.

If a party wall is destroyed or damaged by fire or other casualty then, to the extent that such damage is not covered by insurance, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered by insurance, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and all repairs necessitated by such negligent or willful act.

Section 5. Right to Contribution does Not Run With land. The right of any owner to contribution from any other owner under this Article shall not be appurtenant to the Land and shall not pass to such owner's successors in title.

Section 6. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every owner shall have an easement and right of entry upon the Lot of any other owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to one Lot which encroach on an adjoining lot or common area. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot or lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE IX

ARCHITECTURAL CONTROL & INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings,

fences, walls, screens (whether by plants or structures) and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, color, shape, height, materials and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of the Association.

In general, no exterior alterations or additions to buildings or garages shall be considered for approval unless such alterations or additions are in harmony with existing structures as to style, shape, color and size. However, this section shall not be construed to mean that the Architectural Committee or Board shall have to approve a proposed alteration or addition that meets the above criteria.

In general, the construction or painting of fences, walls, screens, and other structures will not be permitted if in the opinion of the Declarant, Board, or Architectural Committee, as applicable, such construction or

planting constitutes an unreasonable obstruction of the view of another owner.

In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site of design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE X

PROTECTIVE COVENANTS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to

formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each building, the Townhomes therein, and the Common Area and facilities shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

(a) All buildings and the Common Area and facilities shall be used for residential and related common purposes. Each Townhome shall be used as a single-family residence and for no other purpose, except that the Declarant may use one or more Townhomes for offices and/or model Townhomes for sales purposes consistent with the Code of Ordinances of the appropriate governmental authority having jurisdiction. However, a resident, upon approval of the Board of Directors, may operate an office in his unit upon such terms and conditions as the Board of Directors may direct, provided the necessary approval is also secured from the appropriate governmental authority having jurisdiction, if required.

(b) Nothing shall be kept and no activity shall be carried on in any Building or Townhome or on the Common Area and facilities which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his Townhome or on the Common Area and facilities which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area and facilities.

(c) No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all duly enacted laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, order, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(d) Nothing shall be done in or to any townhome or in, to, or upon any of the Common Areas and facilities which will impair the structural integrity of any building, townhome, or portion of the Common Areas and facilities or which would impair or alter the exterior of any Building,

Townhome, or portion of the Common Areas and facilities or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except as set out in (a) of this section.

(f) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Townhome, Building, or any portion of the Common Area and facilities, except as allowed by the Association pursuant to its bylaws or as required by the appropriate governmental authority having jurisdiction provided, however, that during the development of the Property and the marketing of Townhomes, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws.

(g) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area and facilities except at the direction or with the express written consent of the Association.

(h) The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and

occupancy of the Townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its bylaws.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to residents within the Property.

Section 4. TV Antennas. The Association may regulate or prohibit the erection of television antennas or placement of satellite dishes on individual Lots.

ARTICLE XI

EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for private streets, driveways, walkways, parking areas, water lines, irrigation systems, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cable television and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

The Declarant reserves the right to subject the real property covered by this Declaration to a contract with

a power company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment by the owner of each building.

Section 2. Easements Appurtenant to Lots. All Common Areas shall be subject to an easement in favor of every Lot, which easement shall be deemed appurtenant to each such Lot, whereby the owner of each such Lot and such owner's family, guests and invitees shall be entitled to use them as a means of ingress, egress and regress to his Lot, public streets and walkways and for such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, stoops, gutters, downspouts, exterior storage rooms and walls and fences. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for

entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 4. Structural Support. Every portion of a Townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 5. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome and that endangers any Building or portion of the Common Area.

Section 6. Easement for Governmental Agencies. An easement is hereby established over the Lots and Common Area for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery,

emergency and rescue activities and law enforcement activities.

ARTICLE XII

PAYMENT OF TAXES AND ASSESSMENTS ON COMMON AREA

The Board of Directors of the Association shall provide for the payment of any taxes or assessments levied on the Common Area by the appropriate governmental authority having jurisdiction. Said payment shall be paid by the Association as a Common Expense from the annual assessments. Upon default by the Association in the payment of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Areas, which default shall continue for a period of six (6) months, the taxing governmental authority shall have a lien on each Lot that has been made subject to this Declaration in an amount determined by dividing the total taxes and/or assessments due by the total number of Lots which have been made subject to this Declaration. The taxing or assessing governmental authority may foreclose the lien against the Lots in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments for public improvements.

ARTICLE XIII

RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder, insurer or guarantor of a first mortgage on a Lot (which includes the Federal National Mortgage Association) will, upon written request, be entitled to (a) inspect the books and records of the

Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (e) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of insurance policy, if applicable.

ARTICLE XIV

INSURANCE AND FIDELITY BONDS

The Association shall acquire and maintain property damage, public liability and flood insurance and fidelity bonds in such amounts and with such provisions as set forth below. Said insurance and Fidelity Bond coverage shall be in conformance with the requirements of the Federal National Mortgage Association Lending Guide, Chapter 3, Part 5, Insurance Requirements.

Section 1. Property Damage Insurance.

a. Required Coverage: If the Association becomes the owner of any buildings or facilities located on the Common Area, the Association shall acquire and maintain a policy of property insurance which shall protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement. The policy must cover all of the buildings or facilities which are considered part of Common Areas except for those that are normally excluded from coverage, such as land, foundation, excavation, etc. Fixtures and building service equipment that are considered part of the Common Areas as well as personal property and supplies owned by the Association should be covered. Premiums for the coverage shall be paid by the Association as a Common Expense.

b. Amount of Insurance: The policy shall cover 100% of the current replacement costs of the facilities owned by the Association. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000 or 1% of the policy face amount. Funds to cover the deductible amounts shall be included in the Association's operating reserve account.

c. Special Endorsements: The following endorsements shall be required:

- i. "Agreed amount and inflation guard endorsement", when it can be obtained;
- ii. "Construction code endorsement", if there is a construction code provision that requires changes to undamaged portions of the building even when only part of the project is destroyed by an insured hazard. Typical endorsements include "demolition cost endorsements", "contingent liability from operation of building laws endorsement", and "increased cost of construction endorsement";
- iii. "Steam boiler and machinery coverage endorsement", if applicable, which provides that the insurer's minimum liability per accident at least equals the lesser of \$2,000,000 or the insurable value of the building(s), housing the boiler or machinery.

d. Named Insured. The "loss payable" clause should show the Association as the named insured.

e. Notices of Changes or Cancellation. The insurance policy should require the insurer to notify in writing the Association at least ten days before it cancels or substantially changes the policy.

Section 2. Liability Insurance. The Association shall acquire and maintain a comprehensive general liability insurance policy covering all Common Areas, public ways, and any other areas that are under its supervision. The policy should provide coverage of at least \$1,000,000 for bodily injury and property damage for any single occurrence. The

policy should provide coverage for bodily injury and property damage that results from the operation, maintenance, or use of the Common Areas and any legal liability that results from lawsuits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, then a specific endorsement is required to preclude the insurer's denial of an owner's claim, cost of negligent acts of the Association or other Owners. The policy must provide for at least ten days written notice to the Association before the insurer can cancel or substantially change the policy.

Section 3. Flood Insurance. If the Association owns buildings or facilities located on Common Area which is in a special flood hazard area, the Association must maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a Common Expense. The amount of insurance should be at least equal to the lesser of 100% of the insurable value of the facilities located in the flood hazard area or the maximum coverage available under the appropriate national flood insurance administration program. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$5,000 or 1% of the policy face amount. Funds to cover this deductible amount shall be included in the Association's operating reserve account.

Section 4. Fidelity Bonds. The Association shall procure and maintain blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not he or she received compensation for services. The Association's bonds should name the Association as the obligee and the premium should be paid as a Common Expense of the Association. A management agent that handles funds for the Association should be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association should be named as an additional obligee in the management agent's bond. The fidelity bond should cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, fidelity bond coverage must at least equal the sum of three months assessments on all units in the project, plus the Association's reserve funds. The bonds must include a provision that calls for ten days written notice to the Association before the bond can be cancelled or substantially modified for any reason. The same notice must also be given to each servicer that services a FNMA mortgage in the project.

Section 5. Directors and Officers Insurance. The Board of Directors may secure Officers and Directors insurance in such amounts as the Board deems appropriate. Premiums shall be paid as a Common Expense of the Association.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charters now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. FHA/VA Approval. Notwithstanding any provisions in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of this subdivision for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following action will require the prior approval of Federal Housing Administration or the Veterans Administration: Annexation of additional properties, amendment of this Declaration of Covenants, Conditions and Restrictions, merger and consolidations, and dissolution.

Section 4. Duration. The covenants and conditions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this

Declaration is recorded, after which time they shall be automatically extended for two (2) successive periods of ten (10) years each.

Section 5. Amendment. Prior to the sale of the first Lot, Declarant may amend this Declaration. After such sale, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing sixty-seven (67%) percent of the total votes in the Association.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Durham County Registry.

Section 6. Certification of Amendment. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF HOMEPLACE IV

By authority of its Board of Directors, Homeplace IV Townhomes Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Homeplace IV, and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Homeplace IV.

HOMEPLACE IV TOWNHOMES ASSOCIATION, INC.

BY: _____
President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment and the certification to be recorded in Durham County Registry.

All amendments shall be effective from the date of recordation in the Durham County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall

be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Notwithstanding the foregoing, no amendment shall be effective unless approved by the appropriate governmental authority having jurisdiction, if required.

Section 7. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets within the Properties. If it is necessary for "no parking" signs, street lights or other necessary traffic aids to be erected in order to accomplish this, this shall be done at the expense of the Association as a Common Expense.

In no case shall the municipality or other agency which provides emergency or regular fire, police, sanitation or other public service for the Properties, be responsible for failing to provide any such service to the Properties or any of its occupant when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, security gates or any other factor within the control of the developer, Association, or occupants.

Furthermore, municipalities or other agencies providing emergency service are expressly permitted to remove or otherwise damage any security gate that may be erected, if necessary to provide emergency service, and on

no count shall they be held liable for such damage, even if the damage occurred on a "false alarm" call.

Section 8. Conflict of Declarations. In the event of a conflict between the provisions of this Declaration and the Woodcroft Declaration, the provisions of the Woodcroft Declaration shall take precedence and be controlling.

Section 9. Prohibition Against Association
Entering Into Long Term Contract While Declarant in Control of Board of Directors. Until such time as the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or December 31, 1993, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after the occurrence of one of the above events, upon not more than 90 days notice to the other party.

Section 10. Garbage Collection. All garbage collection services shall be hand refuse collection provided by the City of Durham.

IN WITNESS WHEREOF, the undersigned, have hereunto set their hands and seals, or if corporate, caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by

authority of its Board of Directors, this the 31st day of March, 1988.

HOYING HUFF, INC.

BY: J. Lamar Huff
President

ATTEST

[Signature]
Secretary

NORTH CAROLINA

WAKE COUNTY

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that J. Lamar Huff personally appeared before me this day and acknowledged that he is _____ Secretary of HOYING HUFF, INC., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal, and attested by himself as its _____ Secretary.

WITNESS my hand and notarial seal this the 31st day of March, 1988.

Margie F. Stroud
Notary Public

My Commission Expires:

6-22-92

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7297.032

FILED
BOOK 1443 PAGE 95-147
APR 13 10 31 AM '88
RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

State of North Carolina-Durham County

(The foregoing certificate(s) of

Margie F. Stroud
A Notary (Notaries) Public for the Designated Governments units is (are) certified to be correct.

This the 13 day of June A.D. 1988
Ruth C. Garrett
Register of Deeds
By: [Signature] Assistant, Deputy
Register of Deeds

EXHIBIT A

BEGINNING at a point in the eastern right-of-way of Highgate Drive, the southwestern corner of Tract 4 as shown on a plat recorded in Plat Book 111, Page 130, Durham County Registry, said point having N. C. Grid Coordinates N=790,946.70 and E=2,019,158.13; runs thence with the eastern right-of-way of Highgate Drive in a northerly direction the following two courses and distances: (1) On a curve to the left, said curve having a radius of 2764.32 feet and an arc distance of 482.77 feet; and (2) On a curve to the left, said curve having a radius of 840.00 feet and an arc distance of 619.70 feet; runs thence leaving said right-of-way North 71° 58' 39" East 283.82 feet to a point; runs thence South 60° 23' 34" East 324.03 feet to a point; runs thence South 16° 52' 14" West 159.47 feet to a point; runs thence South 23° 00' 02" West 400.06 feet to a point; runs thence South 10° 56' 21" West 111.01 feet to a point; runs thence South 02° 59' 46" West 260.02 feet to a point; runs thence South 09° 19' 04" East 132.46 feet to a point; runs thence North 79° 10' 28" West 180.01 feet to a point; runs thence North 87° 45' 00" West 334.39 feet to the point of BEGINNING according to a survey by Bass, Nixon & Kennedy dated January 20, 1988 entitled "Foundation Survey Homeplace IV". For further reference see a plat recorded in Plat Book 111, Page 130, Durham County Registry.