

DRAWN BY AND MAIL TO:  
BEKRY, HOGUEWOOD, EDWARDS  
& FREEMAN, P. A.  
ONE NORTH PLAZA, SUITE 3601  
CHARLOTTE, N. C. 28280

PRESENTED  
APR 19 1984  
REGISTRATION  
MAR 21 1984

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF UNIT OWNERSHIP  
UNDER CHAPTER 47A OF THE NORTH  
CAROLINA GENERAL STATUTES FOR  
HOBB'S RIDGE CONDOMINIUM

THIS DECLARATION and the exhibits which are attached hereto and made a part hereof by this reference, are made and executed this 18<sup>th</sup> day of April, 1984, by SELWYN FARMS LIMITED PARTNERSHIP, a North Carolina limited partnership, hereinafter called the "Declarant," for itself, its successors, grantees and assigns, pursuant to the provisions of the North Carolina Unit Ownership Act, North Carolina General Statutes Chapter 47A.

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of certain real property in Mecklenburg County, North Carolina, more particularly described and defined in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the Declarant desires to submit by this Declaration a portion of the property described on Exhibit A to the provisions of the North Carolina Unit Ownership Act, North Carolina General Statutes Chapter 47A, as amended (hereinafter referred to as the "Act"), thereby creating a condominium known as HOBB'S RIDGE CONDOMINIUM, thereafter reserving the right, but having no obligation, to add the balance, or certain portions of the balance, of the property described in Exhibit A to such condominium;

WHEREAS, the Declarant is the owner of certain multi-unit buildings and certain other improvements heretofore constructed on the property identified as "Phase I," on Exhibit B, attached hereto and made a part hereof, and it is the desire and intention of the Declarant to divide such property into condominium units as those terms are defined under the provisions of the Act, and to sell and to convey the same to various purchasers subject to the covenants, conditions, obligations and restrictions herein reserved to be kept and observed;

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property identified as Phase I on the attached Exhibit B, and all other Phases which are subjected at a later date to this Declaration through recorda-

tion of Supplementary Declarations as hereinafter provided, are held, and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of the plan for the division of such property into condominium units, and shall be deemed to run with the land and shall be a burden and benefit to the Declarant, its successors and assigns, and any person acquiring and owning an interest in the real property and improvements, their grantees, successors, heirs, administrators, devisees and assigns. Every grantee of any interest in such property, by the acceptance of a deed or other conveyance of such interest, whether or not such person shall otherwise consent in writing, shall take subject to provisions of the Act, and this Declaration and any Supplementary Declarations, and shall be deemed to have assented to the same.

#### ARTICLE I.

##### STATUTORY PROVISIONS AND DEFINITIONS

1. Statutory Provisions. This Declaration is made pursuant to Chapter 47A of the North Carolina General Statutes, as amended, in effect as of the time of recording of this Declaration.

2. Definitions. Unless defined herein, or unless the context requires otherwise, the words defined in North Carolina General Statutes §47A-3, when used in this Declaration or any amendment hereto, or in any Supplementary Declaration, shall have the meaning provided therein. The following words, when used in this Declaration or any Supplementary Declaration or amendment hereto, unless the context requires otherwise, shall have the following meaning:

(a) "Act" means the Unit Ownership Act, North Carolina General Statutes, Chapter 47A, as amended.

(b) "Assessment" means an Owner's share of the Common Expenses assessed against such Owner and his Unit from time to time by the Condominium Association in the manner hereinafter provided.

(c) "Board" or "Board of Directors" means the Board of Directors of the Condominium Association and "Director" or "Directors" means a member or members of the Board.

(d) "Bylaws" means the Bylaws of the Condominium Association contained in Exhibit C, attached hereto and made

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a part hereof by this reference, which constitute the Bylaws governing administration of the Condominium Property as required by Section 47A-18 of the Act.

(e) "Common Areas and Facilities" or "Common Area" means all of the Condominium Property and every part thereof, excluding the Units, but including Limited Common Areas and Facilities.

(f) "Common Expenses" means all or any of:

(1) All expenses incident to the administration, maintenance, and repair or replacement of the Common Areas and Facilities.

(2) Assessments levied against the Units by Selwyn Farms Communities Association, Inc.

(3) Expenses determined by the Condominium Association to be common expenses and which are lawfully assessed against the Unit Owners.

(4) Expenses declared to be common expenses by the Act or the Condominium Documents, this Declaration or the Bylaws.

(5) All sums lawfully assessed against the Unit Owners by the Condominium Association.

(g) "Condominium Association" means Hobb's Ridge Homeowners' Association, Inc., a nonprofit corporation formed under Chapter 55A of the North Carolina General Statutes, whose members are limited to and consist of all Owners of condominium Units of Hobb's Ridge Condominium, including Declarant.

(h) "Condominium Documents" means and includes this Declaration, the Bylaws and Rules and Regulations as may be created pursuant to this Declaration, governing the use of the Condominium Property, and Supplementary Declarations adding property to Hobb's Ridge Condominium, all as may be amended from time to time.

(i) "Condominium Property" or "Property" means all of the property submitted to the Act by this Declaration or by Supplementary Declarations, being the property identified as Phase I and described in Exhibit B of this Declaration, and so much of the property described in Exhibit A as shall be submitted from time to time to the Act; the buildings and all other improvements situated thereon whether the same be

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Common Areas and Facilities or Units or any part thereof, and all easements and rights appurtenant thereto.

(j) "Declarant" means Selwyn Farms Limited Partnership, a North Carolina limited partnership; or its successor in fee ownership of all remaining Units (more than one Unit) unsold to purchasers for use as residences. At no point in time may there be more than one "Declarant."

(k) "Declaration" means this Declaration of Unit Ownership under Chapter 47A of the North Carolina General Statutes for Hobb's Ridge Condominium.

(l) "Expansion Land" means all of that real property described on Exhibit A that has not been submitted to this Declaration or any Supplementary Declaration, with respect to which Declarant has the right to add to the Condominium upon compliance with the provisions of Article XIV hereof.

(m) "Institutional Mortgage," sometimes referred to as "first mortgage" herein, shall mean and refer to a first mortgage or deed of trust originally executed and delivered to or held through assignment or assignments by an Institutional Lender or any mortgage or deed of trust held by Declarant and its successors and assigns.

(n) "Institutional Lender" shall mean and refer to a bank or savings and loan association or an insurance company or a title insurance company or a pension trust or real estate investment trust, or any other private or governmental institution which is regularly engaged in the business of mortgage financing (including the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association), or a subsidiary of any of the foregoing or a designee of any of the foregoing, or Declarant, which owns a mortgage on one or more Units, or any of the foregoing which acquires an Institutional Mortgage as herein defined, by assignment or through assignments from a noninstitutional lender.

(o) "Limited Common Areas and Facilities" or "Limited Common Area" means these parts of the Condominium Property which are described in Section 5 of Article III of this Declaration, which are subject to the Declaration from time to time.

(p) "Majority" or "Majority of Unit Owners" means the owners or more than fifty percent (50%) of the aggregate Percentage Interests in the Common Areas and Facilities as

established by this Declaration, assembled and voting at a duly called meeting of the Unit Owners.

(q) "Member" means a member of the Condominium Association.

(r) "Percentage Interest" means the percentage of undivided interest held by each Unit Owner in the Common Areas and Facilities as set forth on Exhibit D attached hereto and as set forth in Section 2 of Article XIV of this Declaration.

(s) "Person" means any individual, corporation, partnership, association, trustee, fiduciary or other legal entity, and shall mean the plural or combination of the same where applicable.

(t) "Phase I" means all of the lands identified as Phase I and described in Exhibit B hereto, which are the land and improvements submitted to the Act by this Declaration.

(u) "Plans" means the site plan entitled "Record Plat - Phase One - Hobb's Ridge," dated March 7, 1984, and prepared by Yarbrough Surveying & Engineering, plus the Plans of the Units and buildings which are part of the Condominium Property, entitled "Parcel D-5 Architecture," and prepared by Architectural Design Group, Inc., all of which are attached hereto as Exhibit E, as supplemented from time to time in the manner described in Article XIV hereof.

(v) "Rules and Regulations" means all rules, regulations, requirements and policies which shall govern and limit the use of the Condominium Property, and which are duly adopted and promulgated by the Board of Directors in accordance with this Declaration.

(w) "Supplementary Declaration" means the document or documents filed by Declarant to include one or more portions of the Expansion Land in the Condominium, in the manner provided in Article XIV of this Declaration.

(x) "Unit" means those parts of the Condominium Property which are described in Section 3 of Article III hereof, which are subject to this Declaration from time to time and which are shown and designated on the Plans as Units.

(y) "Unit Owner" or "Owner" means the record legal fee owner, whether one or more persons, of a Unit,

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specifically including contract sellers, but excluding any lender, trustee or creditor whose interest in the Unit is merely as security for the performance of an obligation.

ARTICLE II.

NAME, ADDRESS AND REGISTERED AGENT

1. Name and Address. The name of the property is Hobb's Ridge Condominium and it is located off Marsh Road in Mecklenburg County, North Carolina.

2. Registered Agent. Donald R. Browning, 1520 East Third Street, Charlotte, North Carolina 28204, is designated to receive service of process in any action which may be brought against or in relation to the Condominium Property. In the event of such agent's death, resignation or removal; his successors shall be appointed by the Board of Directors, and the Board of Directors shall so indicate by recording an instrument to that effect with the Register of Deeds of Mecklenburg County, North Carolina.

ARTICLE III.

PROPERTY RIGHTS

1. Description of Land. It is the intent of Declarant to create hereby an "expandable condominium," with the maximum land that may be included in this Declaration being all that property described on Exhibit A attached hereto and incorporated herein by reference, together with rights, easements and appurtenances thereunto belonging. The property which hereby is submitted to the Act by this Declaration is the land on which the buildings and improvements are located in the City of Charlotte, Mecklenburg County, North Carolina, more fully described and identified as Phase I on Exhibit B attached hereto and made a part hereof, together with rights, easements and appurtenances thereunto belonging. By Supplementary Declaration, in the manner hereinafter provided, Declarant may from time to time, at any time through and including December 31, 1993, add the Expansion Land, as defined in Section 2(1) of Article I hereof, or any portion thereof, to the Hobb's Ridge Condominium, and subject such land and buildings and improvements constructed thereon to this Declaration, and thereafter such land, buildings, and improvements therein described shall be and become subject to the Act and this Declaration as if included from the beginning. By acceptance of a deed to a Unit created hereby or by Supplementary Declaration, each Unit Owner agrees that such additions and the Units

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therein may be added to the Condominium Property and that such Unit Owner's Percentage Interest will be reduced in the manner set forth in Section 2 of Article XIV hereof. Declarant expressly reserves the right to add such additions to the Condominium Property and to bring such additional Phases within the scheme of this Declaration without the consent of the Condominium Association, its Members or Unit Owners; provided, however, that nothing contained in this Section 1 of Article III, or contained in the Plans, shall bind Declarant, its successors or assigns, to make the proposed additions or, in the event such proposed additions are not made, to adhere to the Plans in any subsequent development of the Expansion Land.

2. Description of Buildings. Phase I of Hobb's Ridge Condominium contains two buildings designated Buildings "2" and "3" on the plans attached hereto as Exhibit E.

The plans show graphically each of the buildings; the particulars of each building, including the location, layout, number of rooms, dimensions, ceiling and floor elevations, approximate area, building designations, and Unit numbers; and the location of the Common Areas and Facilities affording access to each Unit. Each Unit is designated by a number in the Plans.

The buildings are constructed on 4-inch concrete slabs, with 2 x 4 framing, 1 x 8 pine siding and fiberglass shingles with each building containing two stories with no basement. The Plans contain a more particular description of the principal materials used in construction of the buildings.

3. Description of Units.

(a) Nature of Ownership. Every Unit, together with an undivided interest in the Common Areas and Facilities, shall for all purposes be, and it hereby is declared to be and to constitute, a separate parcel of real estate. The Unit Owner thereof shall be entitled to the exclusive ownership and possession of his Unit, subject only to the covenants, restrictions and easements contained herein and in the Bylaws, and the Rules and Regulations, resolutions and decisions adopted pursuant to the Declaration and the Bylaws. The Percentage Interest of each Unit Owner shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with such Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. A Unit Owner shall automatically become a Member of the

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Condominium Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Condominium Association shall automatically pass to his successor in interest. By acceptance of a deed of a Unit, the Unit Owner agrees to abide by this Declaration, the Bylaws and all duly adopted Rules and Regulations of the Condominium Association and the Board, and agrees to pay to the Condominium Association all assessments and charges as set forth in Article VIII of this Declaration.

(b) Nature, Type and Description of Unit. Buildings "2" and "3" in Phase I contain four units each connected to one another by common walls or floors or ceilings. The Phase I Units are located, respectively, at the addresses and are of disparate size, constructed according to four (4) basic floor plans all as set forth in Exhibits D and E attached hereto. The designation of each Unit is shown on the Plans and each Unit in Phase I shall be identified by two digits separated by a hyphen, as set forth and shown on Exhibits D and E attached hereto. The first digit shall correspond to the number of the building in which the Unit is located; the second digit (following the hyphen) shall indicate the number of the Unit in that building.

(c) Unit Dimensions. Each Unit shall include all the air space within the boundaries thereof as follows:

(1) The dimensions of the lateral and perimeter boundaries are vertical planes which coincide with one of the following, as appropriate: (i) the unexposed facing of drywall next to studs or structural portions of structural or load-bearing walls; (ii) the unexposed facing of finish moulding, panelling or interior brick veneer next to studs or structural portions of structural or load-bearing walls; and (iii) the interior exposed facing of structural or load-bearing walls which are not covered with drywalls, moulding, panelling or interior brick veneer (a plane coincident with the interior facing of exposed studs or structural portions); such boundaries of the Unit and (except for facings of structural or load-bearing interior walls) to intersect the other lateral or perimetrical boundaries thereof.

(2) The dimensions of the upper boundaries are horizontal planes which coincide with the unexposed facing of drywall (the facing next to joists or structural portions of buildings) of ceilings, or the unexposed facing of finish moulding or panelling of ceilings in areas with no drywall facing, extended to intersect the lateral or perimetrical boundaries of the Unit.



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(3) The dimensions of the lower boundaries are horizontal planes which coincide with the unfinished upper surfaces of floor slabs on the ground level and the unfinished upper surface of subflooring on the second floor level, extended to intersect the lateral or perimetrical boundaries of the Unit.

It is the intent hereof that the Unit will include all interior drywall, panelling and moulding, and any surface finish or wallpaper, and all finished flooring, such as exposed wooden flooring, vinyl, linoleum or ceramic floor covering, matting and carpeting; but will not include studs, supports and wall insulation, concrete slabs, floor or ceiling joists, except when located in non-load-bearing interior walls. Each Unit shall be deemed to include the ~~interior and exterior of any and all doors, windows, sliding glass doors and other closures and those portions of any utility room within the dimensions of such utility room as set forth above.~~ Included as part of a Unit are all door locks and other security or mechanical devices which control the opening and closing of doors and windows. Included also as part of each Unit are the following:

(a) The heating and air conditioning systems serving the Unit, wherever located.

(b) Lighting fixtures and electrical receptacles serving the Unit, wherever located.

(c) Nonstructural, non-load-bearing interior partition walls within the boundaries of the Unit (excepting pipes, wires, conduits and other facilities for the furnishing of utilities and other services to other Units).

(d) All immediately visible fixtures and appliances (such as kitchen appliances and bathroom fixtures).

(e) All pipes, wires, conduits and other facilities for the furnishing of utilities and other services to the Unit, which are within the boundaries of the Unit and which do not service other Units.

In interpreting this Declaration and the Plans, the actual physical boundaries of a Unit as originally constructed, or of a Unit reconstructed in substantial compliance with the original Plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in this Declaration or the Plans,

regardless of settling or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans and those of the Units.

Notwithstanding provisions, if any, in this Declaration to the contrary, the Association shall be responsible for the repair of damage, regardless of cause, to all portions of any Unit as a result of roof leakage and pipe breakage or overflow caused by events occurring outside of a Unit, and shall be responsible for repairs to damaged elements of the Common Areas and Facilities; provided, however, in the event damage to a Unit or to the Common Areas and Facilities is caused by the negligence or willful misconduct of a Unit Owner, the Condominium Association and all Owners whose Units are damaged by such negligence or willful misconduct shall have full recourse against the said Unit Owner to recover all damages and expenses caused as a result of such negligence or willful misconduct.

4. Common Areas and Facilities.

(a) Description. The Common Areas and Facilities consist of the entire property from time to time subject to this Declaration, except Units, and include, without limitation, the following:

(1) The land on which the buildings are erected and all the land surrounding the buildings that lies within the boundaries of the land from time to time subject to this Declaration, and exterior walls, roofs, interior structural, load-bearing walls (except the drywall, panelling, moulding and floor covering), and every part of the Condominium Property other than the Units.

(2) The foundation and structural members, including columns, girders, beams and supports of all Units.

(3) All installations including pipes, wires, conduits, and other facilities designed and intended for common use or to serve more than one Unit, such as, but not limited to, electrical service, gas and plumbing, whether located in Common Areas and Facilities or in Units, excluding from such installations all parts thereof, and all items affixed or connected thereto, not designed or intended for common use by more than one Unit.

(4) Easements for access, maintenance, repair, reconstruction and replacement of the Common Areas and Facilities and all other services necessary or convenient to the existence, maintenance, safety and use of the Condominium Property.

(5) The yards, landscaping, fences, nonpublic roads and driveways, parking areas, walks, retaining walls and all paved areas.

(6) All maintenance and recreational areas, if any.

(7) Any portion of the Condominium Property shown and designated on the Plans as Common Area or Limited Common Area.

(b) Percentage Interest. The Unit Owners shall own the Common Areas and Facilities and the Limited Common Areas and Facilities as tenants in common, with each Unit having appurtenant thereto the Percentage Interest in the Common Areas and Facilities and the Limited Common Areas and Facilities set forth in Section 2 of Article XIV hereof; provided, however, the use of the Limited Common Areas and Facilities shall be restricted as set forth in Section 5 of this Article III. The Percentage Interest appurtenant to each Unit has been determined as required by law and is based on estimated fair market value as of the date of this Declaration, but such determination shall not restrict the Declarant or any subsequent owner in establishing a sales price for any particular Unit, whether such sales price may be more or less than the estimated fair market value.

(c) Separability of Percentage Interest. The Percentage Interest cannot be separated from the Unit to which it appertains and shall automatically be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance.

(d) No Partition. The Common Areas and Facilities shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Act, this Declaration and the Bylaws. Nothing contained herein, however, shall be deemed to prevent ownership of a Unit by more than one person, either as tenants by the entirety, or as tenants in common, or in any other form permitted by law.

(e) Use of Common Areas and Facilities. Each Unit Owner shall have the right to use the Common Areas and Facilities in accordance with the purposes for which they are intended, without hindering the exercise or encroaching upon the rights of other Unit Owners. The Board shall, if any question arises, determine the purpose for which any part of the Common Areas and Facilities is intended for use.

The Board shall have the right to promulgate Rules and Regulations limiting the use of Common Areas and Facilities to Unit Owners, their tenants and guests, as well as providing for the exclusive use of a part of the Common Areas and Facilities by a Unit Owner, his tenants and guests for special occasions. Such exclusive use may be conditioned upon, among other things, payment of a fee. Any Unit Owner may delegate, in accordance with the provisions of this Declaration, the Bylaws and Rules and Regulations, his right to use Common Areas and Facilities to the immediate members of his family living in the Unit, to a limited number of guests or to tenants who reside in a Unit.

5. Limited Common Areas and Facilities. Ownership of a Unit shall entitle the Owner thereof to the exclusive use or use with others necessarily served thereby of the Limited Common Areas and Facilities appurtenant to such Unit and so designated in the Plans. Such areas may be used for the storage of personal property, supplies, and for any other use permitted by the Board provided no stored item or improvement is visible from outside such Limited Common Area. Limited Common Areas and Facilities shall not be construed or interpreted to be separate and apart from the Common Areas and Facilities in general, being limited only with respect to the reserved use thereof by the Unit or Units served. Limited Common Areas and Facilities shall include: (i) those areas designated as such on Plans attached as Exhibit E; (ii) any balcony, patio (concrete slab) or entrance area serving no more than two Units particularly, such being appurtenant to the Unit or Units served.

Exclusive use of the Limited Common Areas and Facilities may be delegated by an Owner to the immediate members of his family, his guests or tenants who reside in a Unit. Owners may place plants, furniture or other similar items within the Limited Common Areas and Facilities adjacent or appurtenant to the Unit, subject to Rules and Regulations duly adopted by the Board with respect thereto. No Owner shall build or construct any type of storage or workshop facility or other similar type of structure within the Limited Common Areas and Facilities, unless prior written approval is obtained from the Board of Directors.

#### ARTICLE IV.

##### RESTRICTIVE COVENANTS

1. Residential. Each of the Units now constructed or to be constructed on the Condominium Property shall be, and the same hereby are, restricted exclusively to single-

family residential use, and shall be occupied only by a single family (which may include no more than two (2) unrelated persons or three (3) unrelated persons in the case of a three-bedroom unit), its servants and guests. The provisions of this paragraph do not apply to property being used by the Condominium Association as incidental to the operation and organization of the Condominium Association or offices used by the Managing Agent of the Condominium Association.

2. Construction and Sale. Anything contained herein to the contrary notwithstanding, it shall be permissible for the Declarant to maintain, during the period of sale of Units and upon such portion of the Condominium Property as Declarant may deem necessary, such facilities as in the sole discretion of the Declarant may be reasonably required, convenient or incidental to the sale of Units, including, but without limitation, a business office, storage area, construction yard, signs, model units and sales offices.

3. Business Activities. No business activities shall be conducted on any portion of the Condominium Property; provided, however, that the foregoing restrictions shall not apply to the Declarant as provided above, and provided further that private offices may be maintained in a Unit so long as such use is incidental to the primary residential use of the Unit and is approved in writing by the Board of Directors which approval shall not be revocable by the Board of Directors so long as the nature and scope of the approved use remains unchanged. The approval of the private office shall not be transferable upon sale of the Unit.

4. Alterations and Modifications by Unit Owner. No Unit Owner shall make structural alterations or modifications including, without limitation, combining and subdividing Units as provided for in Section 10 of this Article IV, to a Unit or to any of the Common Areas and Facilities, without the written approval of the Board of Directors.

Upon approval of the alterations and modifications, the Unit Owner shall be required: (i) to complete expeditiously all alterations; (ii) to pay the full cost of performing all alterations without incurring any mechanics' or materialmen's liens; (iii) to pay all costs and expenses (including reasonable attorneys' fees) incurred in connection with the preparation, review, execution and recording of any amendment to the Declaration (including the Plans) needed in order to reflect the condition of the Building after completion of such alteration; and (iv) to refrain from making any alteration that will impair the structural integrity of the

Building or any mechanical or electrical system therein, adversely affect either the fire retardant or sound absorbent quality of the Building or lessen the support of any portion of the Building, or in any way impair the soundness, safety, appearance or value of any portion of the Condominium Property. All costs and expenses incurred by the Board in connection with its approval or disapproval of such alteration or modification (including fees for such architectural, engineering, legal and other professional services as the Board may deem necessary to aid in its determination) shall be borne by the Unit Owner seeking such approval.

5. Motor Vehicles. No motor vehicle (other than private passenger vehicles which shall be currently licensed and inspected), boat, trailer, mobile home, motor home, trailer or any similar items shall be stored in or upon the Common Areas and Facilities, unless placed upon a portion of the Common Areas and Facilities which may be designated from time to time by the Board for the storage of such items. The Board shall have the right to charge a fee for such storage at rates competitive with legal storage rates. Motorcycles which do not contain adequate muffler systems (as determined by the Board in its sole discretion) shall not be permitted on the Condominium Property.

6. Signs. No signs or other advertising devices shall be displayed which are visible from the exterior of any Unit or on the Common Areas and Facilities, including "For Sale" or "For Rent" signs, without permission from the Board; except that the Declarant is exempt from this provision as provided above and this provision shall not limit the rights of Institutional Lenders.

7. Prohibitions on Use of Common Areas and Facilities. Except with the specific written approval of the Board and as permitted in Section 5 of Article III of this Declaration, the Common Areas and Facilities, including Limited Common Areas, shall not be used for temporary or permanent storage of supplies, personal property, trash or refuse of any kind, other than in common trash receptacles placed at the discretion of the Board, nor shall such areas be used in any way for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. No activities shall be carried on nor condition maintained by any Unit Owner, either in his Unit or upon the Common Areas and Facilities, if such activities should despoil, or tend to despoil, the appearance of the Condominium Property. No "garage" or "attic sales" shall be permitted outside of a Unit. It is expressly acknowledged and agreed

by all parties concerned that this section is for the mutual benefit of all Owners of the Condominium Property and is necessary for the protection of the Unit Owners and is enforceable by the Board or by any one or more Unit Owners through the Board of Directors.

8. Animals. No animal shall be kept in or on the Condominium Property, except for small household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions or other nuisance. No savage or dangerous animal shall be kept or permitted in or on the Condominium Property. No more than two household pets may be housed within a Unit without written permission of the Board. No pets may be permitted to run loose upon the Common Areas and Facilities, and any Unit Owner who causes or permits any animal to be brought or kept upon the Condominium Property shall indemnify and hold the Condominium Association harmless for and from any loss, damage or liability which it sustains as a result of the presence of such animal on the Condominium Property, regardless of whether the Condominium Association or the Board has given its permission therefor. In the event any animal is permitted by a Unit Owner to be on the Common Areas and Facilities without a leash, then such Unit Owner shall be subject to an additional assessment by action of a majority of the Board and up to \$100.00 for each such occurrence with such additional assessment to become a part of the next due assessment payable by such Owner. After three occurrences for which a Unit Owner is assessed a fine on account of an unleashed pet on the Common Areas and Facilities, the Board, after motion by a majority of the Board, may order the permanent removal of such pet from the Condominium Property.

9. Access to Units. The Condominium Association and its agent shall have access to each Unit from time to time during reasonable working hours, upon oral or written notice to its Owner, as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities. The Condominium Association and its agents shall also have access to each Unit at all times without notice, as may be necessary to make emergency repairs to prevent damage to Common Areas and Facilities or to another Unit.

10. Subdivision and Combination. No Unit may be divided or subdivided into smaller units, nor any portion thereof sold or otherwise transferred, without an amendment to the Declaration to show the changes in the Units to be affected thereby; provided that any amendment to this Declara-

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tion providing for subdivision into smaller units must be approved by Unit Owners (other than Declarant) owning one hundred percent (100%) of the total Percentage Interests not owned by Declarant and by Declarant if Declarant still owns any Units or any portion of the Expansion Land. Subdivision of Units shall be effected in compliance with the requirements of Section 4 of this Article IV and upon such subdivision, the Unit Number of the subdivided Unit shall consist of the original Unit Number and a letter designation for each new subdivided Unit. New Unit Numbers must be allocated to the subdivided Units. Upon compliance with the requirements of Section 4 of this Article IV, two or more entire adjacent Units may be combined into a larger Unit, provided that both of the combined Units are under common ownership at the time of effecting such combination, whereupon the Percentage Interest in the Common Areas and Facilities appertaining to such combined Unit shall be the sum of the respective Percentage Interests in the Common Areas and Facilities appertaining to each of the Units that have been combined. In such event, the Unit Number of the combined Units shall consist of the hyphenated Unit Numbers of all Units so combined.

11. Nuisances. No nuisances shall be allowed upon the Condominium Property and no person shall engage in any use, practice or activity upon the Condominium Property which is noxious, offensive or a source of annoyance to Unit Owners or which reasonably interferes with the peaceful possession and proper use of the Condominium Property by any Unit Owner. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any Unit Owner who shall dump or place (or permit his family, tenants, guests or agent to do so) any trash or debris upon any portion of the Condominium Property shall be liable to the Condominium Association for the actual cost of removal thereof or the sum of \$100.00, whichever is greater, and the same shall be added to and become a part of the assessment next coming due to which the Unit Owner or his Unit is subject. No Unit Owner shall permit any use of a Unit or of the Common Areas and Facilities which will increase the rate of insurance upon the Condominium Property.

12. Lawful Use. No immoral, improper or unlawful use shall be made of the Condominium Property or any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed.

13. Restriction on Transfer of Common Areas. Except as provided by statute in case of condemnation or



substantial loss to the Common Areas and Facilities, the Condominium Association shall not by act or omission abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Areas and Facilities, without the unanimous written consent of all Owners, and written approval of the holders of all Institutional Mortgages then in force with respect to all of the Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed a transfer within the meaning of this paragraph.

14. Rules and Regulations. The Board may from time to time promulgate Rules and Regulations respecting the restrictive covenants set out in this Article IV, but such Rules and Regulations shall be consistent with these restrictions and not in derogation or intended as an amendment thereof.

15. Leasing of Units. With the exception of an Institutional Lender in possession of a Unit following a default in an Institutional Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease a Unit for transient or hotel purposes and no Unit may be leased or rented for an initial term of less than 180 days. No Unit Owner may lease less than the entire Unit. Any lease agreement shall be subject in all respects to the provisions of the Declaration and the Bylaws and shall provide that any failure by the lessee to comply with the terms of such documents shall be a default under the lease; and the Owner of any such leased Unit shall, upon receipt of written request from the Board of Directors detailing any such failure by the lessee to comply with the terms of the Declaration and Bylaws, undertake to cure or require the lessee to cure any such failure to comply within thirty (30) days of such written request. If such failure to comply has not been cured within thirty (30) days, then the Owner shall terminate such lease and take immediate steps to remove the defaulting lessee from the Unit. The Board may adopt a standard form lease for the Condominium and upon such adoption no lease of a Unit may be made which is not on such lease form. In the event that any Unit Owner does not comply with these provisions, he shall be subject to an additional assessment by the Board of up to \$20.00 per day for each day of violation with each such assessment becoming a part of the next due assessment on his Unit. The Condominium Association must be furnished with copies of all leases and subleases within fifteen (15) days of the execution of same and shall also be furnished the name of the tenant's business and home telephone number. Each Unit Owner of a leased Unit shall be responsible for

paying all assessments due and the provisions of this Paragraph 15 shall not be construed as to impose direct liability on the lessee or sublessee to pay any assessment on behalf of the Unit Owner of a leased Unit. However, Unit Owners and lessees shall be jointly and severally liable for any liabilities arising out of the ownership, occupancy, use, misuse, or condition of any portion of a Unit or the Common Areas and Facilities.

## ARTICLE V.

## EASEMENTS

1. Use and Enjoyment. Every Unit Owner, his or her family living in a Unit, tenant of a Unit Owner, and licensees, invitees, employees, and agents of a Unit Owner shall have a right and easement of use and enjoyment in and to the Common Areas and Facilities, except Limited Common Areas and Facilities (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium Property designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Condominium Association to control the use and enjoyment thereof as provided in this Declaration and the Bylaws, and in the duly adopted Rules and Regulations of the Condominium Association, which shall include, but not be limited to, the right of the Board to limit use and enjoyment thereof to the Unit Owners, and their respective families living in the Unit, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Unit Owner, his or her family, tenants and guests.

(b) The right of the Condominium Association to limit the number of guests of Unit Owners.

(c) The right of the Condominium Association to suspend the voting rights and right to use of the Common Areas and Facilities other than the use of parking facilities, roadways, and easements for access, ingress, and egress or facilities which the Condominium Association provides by a Unit Owner, his or her tenants and guests, for any period of time during which an assessment against such Owner's Unit remains unpaid or for infraction of its Rules and Regulations.

(d) The right of the Condominium Association to charge reasonable admission fees, guest fees or other fees

for use of Common Areas and Facilities or for special uses that might be made of certain parts of the Common Areas and Facilities by Unit Owners or by others.

(e) The right of the Condominium Association to limit the number of guests of Unit Owners as to the use of any part of the Common Areas and Facilities.

(f) The right of the Condominium Association to regulate, locate and direct access routes on the Common Areas and the location of parking therein and to allocate parking spaces to each Unit, all to be done in a reasonable manner.

2. Maintenance and Repair. There shall be an easement in, over, under and through the Units and the Common Areas and Facilities for the installation, maintenance, repair, replacement, inspection, upkeep, and improvement of Units and the Common Areas and Facilities. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

3. Structural Support. Every portion of a Unit or the Common Areas and Facilities which contributes to the structural support of another Unit or any portion of the Common Areas and Facilities shall be burdened with an easement of structural support.

4. Encroachments. If any portion of the Common Areas and Facilities encroaches upon any Unit or if any Unit encroaches upon any other Unit or upon any portion of the Common Areas and Facilities or the Limited Common Areas and Facilities as a result of settling or shifting of a Building, or as the result of survey error or error in the description, an easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist. If any building, any Unit, any adjoining Unit, or any adjoining part of the Common Areas and Facilities or the Limited Common Areas and Facilities shall be partially or totally destroyed as a result of fire or other casualty or as a result of eminent domain proceedings, when such are rebuilt upon the original site and upon the same Plans as the original building, encroachments of parts of the Common Areas and Facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Areas and Facilities resulting from such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject improvements shall stand.

5. Utilities. There shall be a general easement upon, across, above and under all of the Condominium Property

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for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer, telephone, cable television installation, and electricity or other community service (e.g., master television antenna system or security system, if installed) which the Declarant or the Condominium Association has installed or might determine to install to serve the Condominium Property. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other necessary equipment on the Condominium Property and to affix and maintain wires, conduits, cables and the like on, above, across, under and through the roofs and exterior walls of the Units. Should any party furnishing any service covered by this general easement request a specific easement by separate recordable document, Declarant or the Condominium Association, as the case may be, shall have the right to grant such easement under the terms hereof.

6. Declarant's Easements. (a) Temporary Easements. Declarant and its successors and assigns shall have a temporary, nonexclusive right and easement of use over and under those portions of the Common Areas and Facilities in Phase I and in additional Phases brought into the Condominium Property by Supplementary Declaration pursuant to Article XIV hereof, not located in a building, for all purposes related to the development, leasing and sale of the Expansion Land for residential purposes, including without limitation Units in Phase I or Units in any additional Phase. This easement shall include, without limitation, the right of vehicular and pedestrian ingress and egress, the right to park motor vehicles and to engage in construction and marketing activities of any nature whatsoever, including the movement and storage of building materials and equipment, the conduct of sales activity, the maintenance of models and sales offices, and the erection and maintenance of directional and promotional signs. These easements and rights shall not be amended or changed prior to January 1, 1994, without the consent of Declarant so long as Declarant owns any Unit in any Phase of Hobb's Ridge Condominium, or any portion of the Expansion Land.

(b) Permanent Easements. Declarant, and its successors and assigns owning the Expansion Land, or any portion thereof, shall have a perpetual nonexclusive right and easement of use of those portions of the Common Areas and Facilities of the Condominium used as driveways, and of use of any and all water lines; sewer lines; storm drains; electric, telephone, or cable television wires or conduits; gas lines; or similar utilities facilities that are a part of the Common Areas and Facilities, to the extent reasonably

necessary for Declarant, or such other owner of the Expansion Land, or a portion thereof, to have ingress to and egress from the Expansion Land, and to provide utility services to the Expansion Land. Provided, however, that the rights and easements described in this Article V, Section 6, subsection (b) may be exercised only for occupancy and use of the Expansion Land for residential purposes; and provided further that the owner of the Expansion Land exercising such rights and easements shall contribute a reasonable share of the cost of the operation and maintenance of the portions of the Common Areas and Facilities so utilized. These easements and rights may not be changed without the prior written consent of all parties entitled to the exercise of such easements and rights.

7. Other. There shall be a general easement in favor of the Condominium Association, its directors, officers, agents and employees (including, but not limited to, any manager employed by the Condominium Association) to enter upon the Condominium Property or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with the permission of any Unit Owner directly affected thereby which permission shall not be unreasonably withheld.

## ARTICLE VI.

### ADMINISTRATION

1. General Provisions. The administration of the Condominium Property, including, but not limited to, the acts required of the Condominium Association, shall be performed by the Condominium Association, acting by and through its Board or as otherwise provided in this Declaration and the Bylaws. The membership of the Condominium Association shall be limited to and consist of all of the Unit Owners. The Condominium Association's activities shall be limited to administration, including management and operation of Hobb's Ridge Condominium, consistent with the Act, this Declaration and the Bylaws.

2. Amendment of Bylaws. The Bylaws are subject to amendment as herein and in the Act and Bylaws provided.

3. Duties and Powers. The duties and powers of the Condominium Association shall be those, and shall be exercised as, set forth in the Act, this Declaration and the Bylaws, together with those implied as reasonably necessary

to effect the purposes of the Condominium Association and the administration of the Condominium Property.

4. Agreements. All agreements and determinations lawfully authorized by the Condominium Association shall be binding upon all Unit Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Condominium Property or the privilege of possession and enjoyment of any part thereto. In furtherance of the foregoing and not in limitation thereof, the Condominium Association shall have the authority to approve and enter into such management agreements as the Board of Directors shall deem necessary or desirable for the administration and operation of the Condominium Property. Any such management agreement shall provide that the same may be terminated by the Board of Directors with or without cause, without penalty, at any time upon thirty (30) days' notice to the manager. No such contract shall bind the Condominium Association in excess of one (1) year from the date of its inception. All costs and expenses incident to the employment of a manager shall be Common Expenses. During his or her tenure, the manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties specifically and exclusively reserved to the directors, officers or Members of the Condominium Association by the Act, this Declaration or the Bylaws. The manager may be such individual, corporation or other legal entity as the Board of Directors shall determine and shall be bonded by a fidelity bond as provided in Section 2(c) of Article IX of this Declaration.

5. Restrictions on Contracts. Neither the Condominium Association nor Declarant shall enter into any contract, lease or other agreement, except contracts for the furnishing of utilities, which shall bind the Unit Owners or Condominium Association for more than one (1) year after the date of the first annual meeting as required by the Bylaws. After the first annual meeting, the Board of Directors shall not enter into any contract, lease or other agreement which shall bind the Unit Owners or the Condominium Association for a period of more than one (1) year unless approved by Unit Owners holding a majority of the total Percentage Interests.

6. Execution of Documents. When any agreement, contract, conveyance or other document is executed by the President and Secretary of the Condominium Association, a third party without knowledge or reason to know to the contrary may rely on such document as being duly authorized and executed.

7. Property. All funds received and titles of all properties acquired by the Condominium Association and income earned and accrued thereon and the proceeds thereof, after deducting therefrom the costs incurred by the Condominium Association in acquiring the same, shall be held for the benefit of the Unit Owners as herein provided and for the purposes herein stated. The Condominium Association may acquire and hold, for the benefit of the Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in such personal property and the income earned and accrued thereon and the proceeds thereof shall be held by the Unit Owners in the same proportions as their respective Percentage Interests in the Common Areas and Facilities. A transfer of a Unit shall vest in the transferee ownership of the transferor's beneficial interest in such personal property.

The Condominium Association shall not deposit, invest or reinvest any funds, unless such funds are invested in government securities, or deposited in banks which are members of the Federal Deposit Insurance Corporation, or savings and loan associations which are members of the Federal Savings and Loan Insurance Corporation.

8. Notices. Notices or demands, for any purpose, shall be given by the Condominium Association and Unit Owners in the manner provided for notices of meetings to Members of the Condominium Association in the Bylaws set forth. Notices to the Condominium Association shall be made in the manner provided in Rules and Regulations made by the Condominium Association.

9. Enforcement. The failure of the Condominium Association or any Unit Owner to enforce any covenant or provision of the Act, Declaration, Bylaws or Rules and Regulations affecting the Condominium Property shall not constitute a waiver of the right to do so thereafter.

10. Rules and Regulations. Reasonable regulations concerning the use of the Units, appurtenances thereto and Common Areas and Facilities, not in derogation of this Declaration, may be made, amended, and repealed from time to time by the Condominium Association; provided that copies of such regulations and amendments thereto shall be furnished to all Unit Owners. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, licensees, and agents, until and unless such regulation, rule or requirement be specifically overruled and cancelled in a regular or special meeting by the vote of a majority of the Unit Owners.

11. Violation of Rules and Regulations. Failure to abide by any such Rule or Regulation or Requirement shall be grounds for an action, brought by the Condominium Association or any aggrieved Unit Owner, to recover damages, or obtain injunctive and equitable relief, or both. In addition to these remedies, in the event of violation by an Owner of any rules or regulations, such Owner's voting rights and rights to use the Common Areas and Facilities, other than use of parking facilities, roadways, and easements for access, ingress, and egress, or other facilities which the Condominium Association provides, may be suspended by the Board after a hearing at which the general requirements of due process shall be observed. The duration of such suspension shall be set by the board and shall not exceed one year for each violation. Such hearing shall only be held by the Board after giving the Owner ten (10) days' prior written notice which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board. The Owner shall have the right to appeal any adverse ruling of the Board and shall be entitled to a hearing de novo before the membership of the Condominium Association, at which the general requirements of due process shall be observed. Upon an appeal by an Owner of a decision by the Board, a special meeting shall be held within sixty (60) days from the decision by the Board, but the decision of the Board shall remain in effect unless overruled by a majority vote of the Members present at the special meeting.

12. Indemnification of Directors and Officers. Each director and officer of the Association, and each former director and former officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he is or may be made a party by reason of his being or having been such director or officer of the Association (whether or not he is a director or officer at the time of incurring such costs and expenses), except with respect to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for willful misfeasance or malfeasance in the performance of his duty as such director or officer. In case of the settlement of any action, suit or proceeding to which any director or officer of the Association, or any former director or officer of the Association, is made a party or which may be threatened to be brought against him by reason of his being or having been a director or officer of the Association, he shall be indemnified by the Association against the costs and expenses



(including the cost of settlement) reasonably incurred by him in connection with such action, suit or proceeding (whether or not he is a director or officer at the time of incurring such costs and expenses), to the extent that such costs and expenses are not reimbursed as part of the settlement, if (a) the Association shall be advised by independent counsel that, in such counsel's opinion, such director or officer did not commit willful misfeasance or malfeasance in the performance of his duty as such director or officer with respect to the matters covered by such action, suit or proceeding, and the cost to the Association of indemnifying such director or officer (and all other directors and officers, if any, entitled to indemnification hereunder in such case), if such action, suit or proceeding were carried to a final adjudication in their favor, could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such directors and officers as a result of such settlement, or (b) disinterested Association members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such director or officer of such costs and expenses. The phrase "disinterested members" shall mean members of the Association other than (i) any director or officer of the Association who at the time is or may be entitled to indemnification pursuant to the foregoing provisions, (ii) any corporation or organization of which any such director or officer owns of record or beneficially ten percent (10%) or more of any class of voting securities, (iii) any firm of which such director or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such director or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representative of each such director or officer, and shall not be exclusive of other rights to which any director or officer may be entitled as a matter of law or under the Declaration, any vote of the Association members or any agreement. The Board may purchase and maintain such Directors' and Officers' Liability Insurance as it shall be deemed appropriate, and premiums for such insurance policies shall be deemed for all purposes proper expenses of the corporation.

13. Limited Liability of the Board of Directors and Officers of the Association. Except as provided in the Act to the contrary, the Board of Directors and its members and the officers of the Association, in their respective capacities as such:

(a) Shall not be liable for the failure of any service to be obtained or paid for by the Association, or

for injury or damage to persons or property caused by the elements or by another Unit Owner or person on the Premises, or resulting from electricity, gas, steam, water, rain, dust, sand or sewerage which may leak or flow from the outside or any part of the Buildings, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place, unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association of the Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of their duties for any mistake of judgment, negligence or otherwise, except for their acts or omissions constituting willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, undertaking, contract, deed, lease, mortgage, instrument or transaction entered into by any of them on behalf of the Association in the performance of their respective duties;

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, licensees or invitees, for loss or damage caused by theft or for damage to personal property left by such Unit Owner or his tenants, employees, agents, licensees or invitees in a Unit, or in or on the Common Areas and Facilities, unless such damage or loss is caused by their acts or omission constituting willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to a Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for their acts or omissions constituting willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the Buildings, or which might in any other way be assessed against or imputed to the Board members or officers of the Association as a result of or by virtue of their performance of their duties, except for their acts or omissions constituting willful misconduct or gross negligence.

14. Defense of Claims. Complaints brought against the Board or any member thereof, or against the Association or any member, officer, employee or agent thereof, in their respective capacities as such, or the Association as a whole, shall be directed to the Board, which shall promptly

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give written notice thereof to the Unit Owners and such complaints shall be defended by the Association. The Unit Owners shall have no right to participate other than through the Association in such defense. Complaints of a nature specified in Section 15 hereof against one or more but less than all Unit Owners or Units shall be defended by such Unit Owners who are defendants themselves and such Unit Owners shall promptly give written notice to the Association of the institution of any such suit.

15. Costs of Suit. If any action is brought by one or more but less than all Unit Owners on behalf of all Unit Owners and recovery is had, the plaintiff's expenses, including reasonable attorneys' fees, shall be a Common Expense, but only to the extent that such expenses are less than the amount recovered on behalf of the Association. If, however, such action is brought against the Board or any member thereof, or against the Association or any member, officer, employee or agent thereof, in their respective capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Unit Owners, the plaintiff's expenses, including attorneys' fees, shall not be charged to or borne by the other Unit Owners as a Common Expense or otherwise.

#### ARTICLE VII.

##### MAINTENANCE, ORDINARY REPAIRS AND ALTERATIONS TO COMMON AREAS

1. By the Condominium Association. The Condominium Association shall maintain, repair and replace all parts of the Common Areas and Facilities (except fences and improvements constructed within the Limited Common Areas, which fences and improvements shall be maintained by the Unit Owners as if such fences and improvements were a part of his or her Unit), whether located within the perimeter walls of a Unit or not, the cost of which shall be charged to the Unit Owners as a Common Expense.

2. By the Unit Owners. Each Unit Owner shall maintain, repair and replace at his or her expense all portions of a Unit which become in need thereof, including all drywall, moulding and panelling; bathroom and kitchen fixtures; light fixtures; wall, ceiling and floor covering materials; matting, carpeting and drapes; heating and air conditioning systems serving the Unit, wherever located; lighting fixtures and electrical receptacles serving the Unit, wherever located; nonstructural, non-load-bearing interior partition walls; pipes, wire, conduits and other

facilities for the furnishing of utilities and other services located within the boundaries of the Unit; and other items within the Unit. Each Unit Owner shall maintain, repair and replace, when necessary, all damage to windows and doors and storm windows and doors which are a part of his or her Unit; except, however, damages caused by agents, employees or subcontractors employed by the Condominium Association shall be repaired by the Condominium Association. In addition, Unit Owners shall maintain, repair, and replace all portions of their Units in a manner which will not impair the structural integrity or appearance of the building or impair the mechanical or electrical systems therein. The materials and workmanship used in such maintenance, repair or replacement shall be of the same type and quality as were originally provided in the Unit. Each Unit Owner shall be required to repair or replace any portion of his or her Unit which, if not repaired or replaced, would adversely affect the exterior appearance of the Condominium Property or in any manner adversely affect another Unit. All damages to the Common Areas and Facilities intentionally or negligently caused by a Unit Owner, his or her family, tenants, guests, invitees, agents, servants, employees or contractors shall be repaired promptly by such Unit Owner, except to the extent such damage is covered by hazard insurance required to be maintained by the Condominium Association, in which case the Condominium Association waives its right of indemnity to the extent of funds paid pursuant to said insurance policy. If the Unit Owner fails to comply promptly with the requirements of this Section (including the maintenance, repair, and replacement of Limited Common Areas and Facilities as set forth below) within fifteen (15) days from written demand by the Condominium Association, the Condominium Association may at its election make such repairs, maintenance, and replacements to the Unit, the Common Areas and Facilities, or the Limited Common Area and Facilities, and assess the expense thereof together with a charge equal to fifteen percent (15%) of the expense thereof which shall reimburse the Condominium Association for administration expenses in connection with the Unit Owner's failure to comply with this Article, against the Unit Owner responsible therefor.

Each Unit Owner shall be responsible for keeping the Limited Common Areas and Facilities under his or her control and dominion in a neat, sightly and proper manner. This shall not impose upon the Unit Owner the obligation to maintain or repair any structural or other similar item (such as paving) on property located within the Limited Common Areas and Facilities assigned to his or her Unit, unless the damage is caused intentionally or negligently by the Unit Owner, as provided above.

3. Restrictions on Unit Owners. No Unit Owner shall perform or cause to be performed any maintenance, repair or replacement work upon a Unit which disturbs the rights of other Unit Owners or jeopardizes the soundness or safety of the Condominium Property. If a Unit Owner shall cause any work to be performed, which in the sole opinion of the Board violates the terms of this paragraph, it shall be immediately corrected and such Owner shall refrain from recommencing or continuing any such work without written consent of the Board. A Unit Owner shall not repair, alter, replace or move any of the Common Areas and Facilities located within a Unit without the prior written consent of the Board. A Unit Owner shall not paint or otherwise decorate or change the outside appearance of the Building in which a Unit is located, including doors and windows and storm doors and windows, or any appurtenance thereto or Limited Common Area serving a Unit without the written consent of the Board. Unit Owners shall hang only drapes, sheers or manufactured blinds on windows. All Unit Owners must use the same type of number and letter, if applicable, for use in identifying the street address of his or her Unit.

4. Duty to Report. Each Unit Owner shall promptly report to the Board or its agent any defect or need for repairs or replacement, the responsibility for which is that of the Condominium Association.

5. Alterations to Common Areas and Facilities. The Condominium Association is authorized to make minor improvements to and alterations to the structures located in and on the Common Areas and Facilities, as a Common Expense, however, no major or structural improvements to or alterations of the Common Areas and Facilities, or improvements or alterations costing in excess of \$20,000, shall be made by the Condominium Association without first obtaining approval of Unit Owners holding at least sixty percent (60%) of the Percentage Interests, except when such improvements are made pursuant to Article IX hereof. It is understood that this Section does not apply to required repair and maintenance of Common Areas and Facilities.

6. Approval of Payment Vouchers. All vouchers for payment of expenses incurred by the Condominium Association in the maintenance, repair, alteration and replacement of the Common Areas and Facilities shall be approved in writing jointly by the President and Treasurer of the Condominium Association. In the absence or disability of the President, the Vice President may perform the duties herein of the President, and the Assistant Treasurer may perform the duties of the Treasurer herein in the absence or dis-

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ability of the Treasurer. Notwithstanding the foregoing, the Board may authorize any officer, Member, committee or independent manager to approve or disapprove all vouchers for payment of routine expenses incident to the maintenance, repair, alteration or replacement of the Common Areas and Facilities, so long as the resolution granting such authority specifically limits the maximum amount which may be authorized on each occasion and so long as the subject resolution describes the items which may be so authorized.

## ARTICLE VIII.

## ASSESSMENTS

1. Initial Assessment; Maximum Amount. The Declarant shall establish the initial assessment which shall remain in effect until December 31, 1984. The monthly assessment for 1984 shall be no more than \$61.00 per Unit. As additional phases are added to the Condominium Property by Declarant pursuant to the provisions of Article XIV hereof, the monthly assessments shall be adjusted so that the Unit Owners contribute pro rata towards the expenses of the Homeowners Association based on their percentage interest in the Common Area and Facilities as computed in the manner set forth in Section 2 of Article XIV. For the calendar years after 1984, the annual assessment shall be set as follows:

(a) The annual assessment may be increased by the Board each year, without a vote of the Members, to an amount not more than twelve percent (12%) in excess of the assessment for the previous year.

(b) The annual assessment may be increased above the increase allowed in subsection (a) of this Section 1 by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting called for this purpose (or at the annual meeting provided written notice of such proposed action is given to all members within the time periods set forth below), written notice of which shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting setting forth the purpose of the meeting. Quorum requirements for such meeting, will be those required at a Special Meeting of the membership, as set out in the Bylaws.

(c) The Board of Directors may establish the annual assessment at any amount not in excess of the maximum stated above.

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2. Establishment of Assessment. Not later than December 15, 1984, and the same date of each year thereafter, the Board shall have determined and shall have given written notice to the Unit Owners of the annual assessment assessed against each Unit for the immediately succeeding calendar year. In determining the annual assessment for each calendar year, the Board shall prepare a budget which shall include an estimate of the cash requirement and shall include a reasonable reserve for contingencies, replacements and maintenance items not performed annually (including specifically, without limitation, reserve for exterior painting, for roof and gutter replacement, and street and parking area maintenance). Any expected income and any surplus from the prior year's fund shall be deducted from the cash requirement. This budget shall be kept on file with the Association for review by Unit Owners. The portion of the estimated cash requirement assessed against each Unit shall be proportional to the Percentage Interest for such Unit. The failure, however, of the Board to determine the amount of an annual assessment or to comply with the requirement that written notice of the amount thereof be given on or prior to December 15 of each year shall not alter or invalidate any assessment later established under Section 1 of this Article VIII nor affect the obligation of any Unit Owner to pay same nor the validity or enforceability of any lien against a Unit established by the Condominium Association. The obligation to pay such assessments shall commence for all Units subject hereto on the day of the recording of this Declaration, or with respect to additional Units, on the day a Supplementary Declaration shall be filed affecting such Units. If the Condominium Association fails to establish new assessments for Common Expenses for the subsequent fiscal year before the expiration of any fiscal year, Unit Owners shall continue to pay the sums as are payable during the fiscal year then ended, and such sums shall be deemed to be the new assessments for the succeeding fiscal year. If the Condominium Association changes the assessment at a later date, such new assessment should be treated as a special assessment pursuant to Section 4 of this Article VIII.

3. Monthly Installments. The annual assessments shall be paid to the Condominium Association, or its designee, in equal monthly installments on or before the first day of each month during any assessment period. In the event of a Unit Owner's default in payment of assessments, not cured within thirty (30) days, the Condominium Association shall have the right to accelerate the entire unpaid balance of the annual assessment and to declare the same immediately due and payable pursuant to the remedies set forth in Section 7 of this Article VIII.

4. Special Assessments. In addition to the annual assessments, the Condominium Association may levy, in any calendar year, special assessments for the purpose of supplementing the annual assessments if the same are deemed to be inadequate to pay the Common Expenses or for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of the Common Areas and Facilities, including the necessary fixtures and personal property related thereto; provided that any such special assessment shall have the assent of two-thirds (2/3) of the Members represented, in person or by proxy, at a meeting (or at the annual meeting if written notice of such an express purpose is given within the time periods hereinafter provided), at which a quorum is present, duly called for the express purpose of approving such expenditure, written notice of which shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting. Special Assessments shall be established against the Units in proportion to their Percentage Interests. The period of the assessment and manner of payment shall be determined by the Board.

5. Purpose of Assessments, Common Expenses. The annual and special assessments established and collected pursuant to this Article VIII shall be used exclusively to pay the Common Expenses including, but not limited to, all expenses, costs, and charges incurred by the Condominium Association in connection with the administration, management and operation of the Condominium Property; the costs of maintenance, repair, replacement and restoration of the Common Areas and Facilities, or any part thereof, and reasonable reserves for items not expensed on at least an annual basis; the cost of all insurance obtained by the Board pursuant to Article IX of this Declaration; the cost of operating and maintaining recreational facilities, if any, which shall become a part of the Common Areas and Facilities; any service fees for cable television if and when provided to all Units under a contract with the Condominium Association; assessments levied against the Units by Selwyn Farms Communities Association, Inc.; and any and all other expenses, costs or charges agreed upon as Common Expenses by the Condominium Association or declared Common Expenses by the provisions of the Act or this Declaration. All assessments, replacement funds, accumulated income, insurance and other escrows and all other assets of the Condominium Association in excess of that needed for the purposes herein stated, determined yearly, either shall be applied to reduce the succeeding year's assessments or shall be returned to the Unit Owners in proportion to their Percentage Interests, as determined by the Board; provided that the Board shall have



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the right to create and to maintain an escrow or trust fund for such reserves as it deems fit.

6. Lien and Personal Obligation. Each assessment provided for in this Article, together with interest from and after the due date of such assessment (specifically including the due date of any installment) at the rate of one and one-half percent (1½%) per month or the highest lawful rate, if lower, and collection costs including reasonable attorneys' fees, shall be a charge on and a continuing lien upon the Unit against which the assessment is made when a notice of such lien has been filed of record in the Office of the Clerk of Superior Court for Mecklenburg County, North Carolina, in the manner provided in Chapter 44A of the North Carolina General Statutes; provided, such notice of lien shall not be filed until such sums assessed remain unpaid for a period of thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied. In addition, each Unit Owner shall be liable personally for any assessment which becomes due and payable with respect to such Owner's Unit. A grantee of a Unit shall be liable, jointly and severally, with the grantor for all unpaid assessments against the Unit which became due and owing at the time of the grant or conveyance, but this obligation shall be without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any Unit Owner or grantee of a Unit Owner shall be entitled to a statement from the Board setting forth an account of the unpaid assessments against a Unit and a grantee thereof shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth.

7. Effect of Nonpayment of Assessment, Remedies of Condominium Association. In the event that any assessment installment is not paid within thirty (30) days after the due date thereof, the Board of the Condominium Association may, at its option, declare the entire unpaid annual assessment immediately due and payable, and such unpaid assessment shall bear interest from the date of acceleration, which shall be effective upon the sending of notice to the Owner of the Unit concerned, regardless of the receipt thereof, such interest to be at the rate of one and one-half percent (1½%) per month or, if lower, the maximum allowed by law. In the event any assessment installment is not paid within thirty (30) days after its due date, there shall be a one-time late charge equal to four percent (4%) of the overdue installment or \$5.00, whichever is greater. The Condominium Association may bring an action at law against the Owner personally

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obligated to pay the assessment, and interest, reasonable attorneys' fees and costs of such action shall be added to the amount of such assessment.

Notwithstanding anything hereinbefore stated in this Section, during any period in which an Owner shall be in default in payment of any installment of an annual, special or other assessment levied by the Condominium Association, the voting rights and the right to the use and enjoyment of the Common Areas and Facilities, other than use of parking facilities, roadways, and easements for access, ingress and egress, or other facilities which the Condominium Association provides, may be suspended by the Condominium Association until such assessment is paid. Prior to the termination of voting rights or use of facilities for failure to pay assessments, the procedure outlined in Section 11 of Article VI shall be followed.

8. Priority of Assessment Lien. The lien of assessments provided for in this Section shall be prior and superior to all other liens except (a) assessments, liens and charges for real estate taxes due and unpaid on the Unit; (b) all sums unpaid on deeds of trust, mortgages and other encumbrances duly of record against the Unit prior to the docketing of the aforesaid lien; and (c) materialmen's and mechanics' liens. The sale or transfer of any Unit shall not affect the assessment against such Unit; provided, however, the sale of a Unit pursuant to the foreclosure sale or execution sale instituted by an Institutional Lender shall extinguish the assessment lien against the subject Unit unless said foreclosure or execution sale results in surplus proceeds over and above the amount necessary to pay off the loan in foreclosure and the expenses of the foreclosure sale, but no such sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or for any future lien in connection therewith. The Condominium Association shall share in the excess, if any, realized by the sale of any Unit pursuant to a foreclosure or action instituted by a superior lienholder in accordance with the provisions of Section 45-21.31 of the North Carolina General Statutes; provided, however, that a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit, or a purchaser who obtains title to such Unit by deed in lieu of foreclosure, shall not be liable for and such Unit shall not be subjected to a lien for the payment of such assessment which accrued prior to the acquisition of title of such Unit by the mortgagee or other purchaser, and provided further that such unpaid assessment shall be deemed to be Common Expenses collectible from all of the Unit Owners including the mortgagee or other purchaser.

9. Owner's Non-Use. No Unit Owner may exempt himself from liability for contributions toward Common Expenses and other obligations to the Condominium Association by waiver of the use or enjoyment of any portion of the Common Areas and Facilities, or by the abandonment or sale of his or her Unit (except that Declarant may deduct from its assessment a reasonable amount for use-related items not consumed, such as water, sewer and cablevision, if and when available, for any Unit owned by it and not occupied).

## ARTICLE IX.

### INSURANCE

1. Authority to Purchase. The Board shall have the authority and obligation to and shall obtain a master insurance policy upon the Condominium Property for the benefit of the Condominium Association, the Unit Owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of the Unit Owners. The original of such policy and endorsements thereto shall be deposited with the Condominium Association, as insurance trustee, and Unit Owners may inspect such policy at any time during reasonable working hours and after reasonable notice to the Board.

2. Coverage.

(a) Master Casualty Policy. The buildings and all other improvements upon the land and all personal property included in the Common Areas and Facilities, and originally installed fixtures, cabinets, and wall and floor coverings of the Units shall be insured in an amount equal to the full replacement value (i.e., 100% of the "replacement costs"), exclusive of foundations and excavation. Such coverage shall afford protection against (i) loss or damage from all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning; and (ii) such other risks as from time to time shall customarily be covered with respect to improvements similar in construction, location and use, including but not limited to, vandalism, malicious mischief, and windstorm damages. If necessary and available, insurance against water or flood damage shall also be obtained and kept in force. The Board of Directors shall review such insurance and its limits annually.

(b) Public Liability. The liabilities of the Condominium Association shall be insured in such amounts as shall be required by the Board and each Unit Owner and his

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or her immediate family, Declarant, its agents and employees shall be named as additional insureds, but only with respect to liability arising out of the ownership, maintenance, use or repair of the Common Areas and Facilities. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Unit Owners as a group to a single Unit Owner. The Board of Directors shall review such insurance and its limits annually. Such public liability insurance shall be in amounts not less than \$500,000.00 per person and not less than \$1 million per occurrence for liability for bodily injury, including death resulting therefrom, and \$1,000,000.00 per occurrence for liability for damage to property, including loss of use thereof.

(c) Fidelity Insurance. The Condominium Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Condominium Association and any other persons who handle or are responsible for the handling of funds of the Condominium Association. Such fidelity insurance coverage shall, at least: (i) name the Condominium Association as an obligee thereunder; (ii) be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Condominium Association plus any reserves; and (iii) contain waivers of any defense bond upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) Other. The Condominium Association may obtain such other insurance coverages as the Board determines from time to time to be desirable, including directors' and officers' liability insurance to protect such persons from liability for negligence while acting in their official capacities, and workers' compensation insurance as applicable law may require, as set out in the Eylaws.

3. Premiums. Premiums upon insurance policies purchased by the Condominium Association shall be paid by the Condominium Association as a Common Expense.

4. Content of Policies. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(a) The master casualty policy on the Condominium Property cannot be cancelled, invalidated or suspended on the account of the conduct of any one or more individual Unit Owners.

(b) The master casualty policy on the Condominium Property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board, or manager, without prior demand in writing that the Board of Directors or manager cure the defect or on account of any failure of the Condominium Association to comply with any warranty or condition regarding any portion of the Condominium Property, over which the Association has no control.

(c) That any "no other insurance" clause in the master casualty policy on the Condominium Property exclude individual owner's policies from consideration.

(d) All insurance policies shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in Best's Insurance Guide, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance shall be obtained from a company with the highest rating available in Best's Insurance Guide. In no event shall the hazard insurance be written by a carrier which has a Financial Rating by Best's Insurance Reports of less than Class VI.

(e) All policies of property insurance shall provide that, despite any provision giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written consent of the Association, or when in conflict with any requirements of law.

(f) Duplicate originals of all such policies shall be furnished to all Owners and their respective mortgagees, provided that in lieu of such duplicate original policies the Condominium Association may deliver certificates to the Owners and their respective mortgagees attesting the fact that such policies and such insurance are in force and effect. Furthermore, the Condominium Association shall furnish to the Owners and their respective mortgagees, upon written request therefor, evidence that premiums for such insurance have been paid on an annual basis.

5. Owners' Insurance. Any Owner and any holder of a mortgage with respect to any Unit may obtain such additional insurance with respect to the Unit, totally at the expense of such Owner or mortgagee, as is desired. Any such insurance shall either: (i) be written by the same insurer which carries the master casualty policy purchased by the Condominium Association pursuant to the provisions of

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Section 2(a) hereof; or (ii) shall provide that such policy or policies shall be without contribution with respect to the master policy or policies of casualty insurance maintained by the Condominium Association. Any such Owner's or mortgagee's policy also shall contain waiver of subrogation provisions as required in Section 9 hereof.

Each Owner may obtain a "Homeowner's Policy" or its equivalent to insure against loss or damage to personal property used in or incidental to occupancy of said Owner's Unit, additional leasing (motel) expenses, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium unit owner's endorsement" or equivalent, covering losses to improvements and betterments to the Unit made or acquired at the expense of the Unit Owner. Duplicate copies of any such policy or policies procured by an Owner or his mortgagee shall be furnished to the Condominium Association within ten (10) days of the effective coverage date of such insurance.

6. Receipt of Proceeds, Insurance Trustee. All insurance policies purchased by the Condominium Association shall be for the benefit of the Condominium Association, the Unit Owners and their mortgagees, and Declarant, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Condominium Association, as insurance trustee. The duty of the Condominium Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes hereinafter stated and for the benefit of Declarant, the Unit Owners and their mortgagees in the following shares:

(a) Common Areas and Facilities. An undivided share of the proceeds received by the Condominium Association on account of damage to the Common Areas and Facilities shall be held for each Unit Owner and such share shall be determined by the subject Unit Owner's Percentage Interest in the Common Areas and Facilities.

(b) Units. Proceeds received by the Condominium Association on account of damage to Units shall be held for the Unit Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors. When the building is not to be restored as provided in Section 11 of this Article IX, an undivided share shall be held for each Unit Owner and his or her mortgagee, such share being determined in accordance with Section 11 of this Article IX.

(c) Mortgages. In the event a mortgagee endorsement has been issued for a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner, as their interests may appear; provided, that no mortgagee shall have the right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired.

7. Distribution of Proceeds. Proceeds of insurance policies received by the Condominium Association as insurance trustee shall be distributed to or for the benefit of the Owners of the Condominium Property in the following manner:

(a) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as provided above. All proceeds remaining after defraying such costs shall be distributed to the Condominium Association. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(b) Failure to Reconstruct or Repair. If it is determined as provided in Section 11 that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners of the Condominium Property as set forth in Section 11. Any remittances to Unit Owners and their mortgagees shall be paid jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

8. Condominium Association as Agent. The Condominium Association hereby is irrevocably appointed agent for each Unit Owner and for each mortgagee or holder of a lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Condominium Association and to execute and deliver releases upon the payment of claims. The Board of Directors is authorized to carry out all such adjustments of claims and execution and delivery of documents for the Association.

9. Waivers of Subrogation and Cancellation Notices. All policies of physical damage insurance obtained by the Board pursuant to this Article shall contain waivers of subrogation against Unit Owners, their tenants, employees, guests and invitees, the Condominium Association, Declarant and others having an interest in the Condominium Property. Such policies shall provide that they may not be cancelled or substantially modified without at least thirty (30) days'

prior written notice to any and all insured parties named therein.

10. Duty to Repair. In the event of damage to or destruction of any improvement on the Condominium Property as a result of fire or other casualty, unless the Condominium Property is partitioned as provided in Section 11, the Board shall arrange for the prompt repair and restoration of such improvement (including any damaged Unit, but not including any wall, ceiling or floor decoration or coverings or other furniture or furnishings, fixtures or equipment in the Unit, unless the subject insurance policy covers a portion or all of such loss to the Unit, in which event the Condominium Association shall repair or replace such damage), and the Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair or restoration in appropriate progress payments. Any cost of such repairs and restoration in excess of the insurance proceeds shall constitute a Common Expense.

11. Partition. If the improvements on the Condominium Property shall be more than two-thirds (2/3) destroyed by fire or other disaster and the Owners holding at least seventy-five percent (75%) of the total Percentage Interests duly resolve not to proceed with repair or restoration, then, and in that event:

(a) The entire Condominium Property shall be deemed to be owned by the Unit Owners as tenants in common.

(b) The undivided interest in the Condominium Property owned by each Unit Owner shall be the same interest as his Percentage Interest in the Common Areas and Facilities previously appurtenant to his Unit or Units.

(c) Any liens or encumbrances affecting any Unit shall be deemed transferred in accordance with the existing priority to the percentage of undivided interest of the subject Unit Owner in the Condominium Property, as hereinabove provided.

The determination of whether the improvements are "more than two-thirds (2/3) destroyed" for the purposes herein stated shall be made as follows: an appraisal of the value of the improvements (excluding land) as of the day immediately preceding the damage shall be obtained by the Board from two appraisers who are members of the American Institute of Real Estate Appraisers, the American Society of Appraisers, the Society of Real Estate Appraisers or a comparable professional association of appraisers. The cost



of repairs and restoration shall then be determined by the Board of Directors by securing not less than three independent bids, in writing, from three reputable building contractors in the community of their proposed charges for making such repairs or restorations, the lowest of which shall be deemed to be the cost. If the costs so estimated shall exceed two-thirds (2/3) of the appraised value prior to the damage, the improvements shall be deemed more than two-thirds (2/3) destroyed.

The Unit Owners may "duly resolve" not to proceed with repair or restoration only when written instruments to that effect signed by Unit Owners holding at least seventy-five percent (75%) of the Percentage Interests have been delivered to the Secretary of the Association, who shall record such instrument in the records of the Condominium Association.

#### ARTICLE X.

##### ARCHITECTURAL CONTROL

1. Approval Required for Changes. To preserve the original architectural appearance of the Condominium Property, except as otherwise expressly specified in the Act or this Declaration, after the purchase of a condominium Unit from Declarant, its successors or assigns, no exterior construction of any nature whatsoever shall be commenced or maintained by or on behalf of any Unit Owner upon any improvement, including without limitation the Limited Common Areas and Facilities; nor shall there be any change, modification or alteration of any nature whatsoever of the design and appearance of any of the exterior surfaces or facades; nor shall any Owner paint, decorate or change the color of any exterior surface, gate, fence, door or roof; nor shall any Owner change the design or color of the exterior lights; nor shall any Owner install window air conditioners, exhaust fans, or any other item which protrudes through any window serving a Unit; nor shall any Owner install, erect, or attach any awning, canopy, shutters, radio or television antennas upon the exterior walls or roofs of a building; nor shall any Owner install, erect or attach to any part of the exterior any sign of any kind whatsoever; nor shall any exterior addition or change, including without limiting the generality of the foregoing, the erection or construction of any fence or wall, be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of exterior design, color and location in relation to the surrounding

structures by the Board. The approval of the Board may be withheld or conditioned in the Board's sole discretion. The Declarant shall be exempt from the provisions of this Article until one hundred twenty (120) days after the date by which seventy-five percent (75%) of the Units have been conveyed, or at the end of the tenth year after the first Unit has been conveyed, whichever shall occur first; provided, however, Declarant's exemption shall cease earlier on the first day after any twenty-four-month period during which Declarant does not add an additional Phase to the Condominium Property; and provided, further, that in the event Declarant's exemption shall have ceased by reason of the expiration of one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units, and thereafter Declarant shall add Units to the Condominium pursuant to Article XIV of the Declaration, and by reason of such addition Declarant shall own more than twenty-five percent (25%) of the Units in the Condominium, then Declarant shall again be exempt from the provisions of this Article until the earliest to occur of the above-stated events.

#### ARTICLE XI.

##### CONDEMNATION

1. General. Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Condominium Association. Unless otherwise required by law at the time of such taking, any award made therefor shall be disbursed by the Condominium Association as hereinafter provided in this Article.

2. Common Areas. If the taking is confined to the Common Areas and Facilities on which improvements shall have been constructed and if Owners holding at least seventy-five percent (75%) of the total Percentage Interests shall decide within sixty (60) days after such taking (the date of the "taking" being defined as the date on which the condemning authority has paid the award and the same has been accepted by the Condominium Association, either voluntarily or as a result of exhaustion of appeal rights) to replace such improvements, or any part thereof, on the remaining land included in the Common Areas and Facilities and according to plans therefor to be approved by the Condominium Association, then the Board shall arrange for such replacement and the Condominium Association shall disburse the proceeds of such

award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Condominium Property is to be repaired or reconstruction as provided in Article IX hereof; subject, however, to the right hereby reserved to the Condominium Association, which may be exercised by a Majority of the Members, to provide for the disbursement by the Condominium Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Owners or any one or more of them in amounts disproportionate to the Percentage Interests appurtenant to their Units established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Owners or any one or more of them as the Condominium Association may determine as a result of a Unit Owner's interest in a Limited Common Area or Facility being taken or partially taken through the power of eminent domain. If Owners holding at least seventy-five percent (75%) of the total Percentage Interests shall not decide within sixty (60) days after such taking to replace such improvements or if the taking is confined to the Common Areas and Facilities on which no improvements shall have been constructed, then the Condominium Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Condominium Association to provide for the disbursement of the remaining proceeds held by it to the Owners in disproportionate amounts.

3. Units. If the taking includes one or more Units, any part or parts thereof, or the Limited Common Areas and Facilities or parts thereof, to which a Unit has exclusive use, then the award shall be disbursed and all related matters, including without limitation, alteration of the Percentage Interest appurtenant to each Unit, shall be handled pursuant to and in accordance with the consent of all Owners expressed in a duly recorded amendment to this Declaration. Such amendments, if any, shall re-align the Percentage Interests, establish the method of distributing the condemnation award and include such other provisions as all of the Unit Owners deem reasonable and appropriate. Further provided, such amendment shall be executed by the mortgagees of such Units and shall not prejudice the creditors or other third parties who have an interest in the condemnation award with respect to their rights, if any, in such award. In the event that such an amendment shall not be recorded within ninety (90) days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or recon-

structured as provided for in Section 11 of Article IX herein, whereupon the Condominium will be terminated in the manner therein and in Section 2 of Article XII prescribed.

#### ARTICLE XII.

##### TERMINATION OF UNIT OWNERSHIP

###### 1. Agreement.

(a) The Condominium Property may be removed from the provisions of this Declaration and the Unit Ownership Act by an instrument to that effect, duly recorded, approved by all Unit Owners; provided that the holders of all liens affecting any of the Units consent thereto or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit Owners in the Condominium Property.

(b) Upon removal of the Condominium Property from the provisions of the Act and this Declaration, the Condominium Property shall be deemed to be owned by the Unit Owners as tenants in common. The undivided interest in the Condominium Property owned as tenants in common which shall appertain to each Unit Owner shall be the Percentage Interest previously owned by such Unit Owner in the Common Areas and Facilities.

2. Destruction. In the event it is determined, in the manner provided in Section 11 of Article IX of this Declaration, that the Condominium Property shall not be repaired or reconstructed after fire or other casualty, the condominium shall be terminated and this Declaration revoked. The determination not to repair or reconstruct after a fire or other casualty shall be evidenced by a certificate of the Condominium Association, signed by the President and the Secretary of the Condominium Association, certifying as to the facts effecting the termination, which certificate shall become effective upon being duly recorded in the Office of the Register of Deeds of Mecklenburg County.

#### ARTICLE XIII.

##### AMENDMENTS

1. By Owners. This Declaration may be amended by the vote of the Unit Owners owning at least ninety percent (90%) of the Percentage Interests; provided that no such amendment shall be effective until placed in writing, executed and acknowledged by Unit Owners owning at least ninety

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percent (90%) of the Percentage Interests, and filed for registration in the Office of the Register of Deeds of Mecklenburg County; and provided, further, that if a larger vote is required to take or refrain from taking a specific action, as set forth in the Act or this Declaration, no amendment shall be made unless and until the Unit Owners holding such larger Percentage Interest in the Common Areas and Facilities execute such amending instrument. All persons or entities who own or hereafter acquire any interest in the Condominium Property shall be bound to abide by any amendments to this Declaration, upon the same being adopted as provided herein and duly set forth in an amended Declaration, and duly recorded as provided herein. Notwithstanding anything to the contrary contained in this Declaration or the Bylaws attached hereto, no change or amendment to this Declaration or the Bylaws shall affect or change the Percentage Interests resulting from expansion of the Condominium Property as set out in Article XIV, or shall allow the partitioning of the Common Areas and Facilities, or shall limit the rights of Unit Owners with respect to leasing of Units as set out in Section 15 of Article IV hereof, unless all Unit Owners, all holders of Institutional Mortgages upon the Units, and Declarant (for so long as Declarant owns any Unit, or any portion of the Expansion Land, until December 31, 1993) shall have given their written approval thereof.

2. Restriction on Amendments. No amendment to this Declaration or to the Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of the holder of an Institutional Mortgage encumbering any of the Units in the Condominium Property without the consent of the holder of such Institutional Mortgage. No amendment to this Declaration or to the Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant.

ARTICLE XIV  
ADDITION OF LAND AND UNITS  
PERCENTAGE INTEREST IN COMMON AREAS

1. Supplementary Declaration. Declarant does hereby reserve the right to add, from time to time, and at any time, subject to the terms and provisions of this Article XIV, any portion or portions of the Expansion Land, and improvements constructed thereon, to the Condominium Property; provided, however, that prior to each such addition, Declarant has constructed upon each portion of the Expansion Land to be added to the Condominium Property (a) a building or buildings of the same architectural style as the Buildings

now located on Phase I, such buildings containing residential dwelling units constructed in the same manner and of substantially the same materials as, and having substantially the same value per square foot of heated floor area as, the Units located in Phase I, and/or (b) recreational facilities (including without limitation, any one or more of the following: swimming pool, clubhouse, tennis court, and open areas) constructed in such a manner as to be architecturally harmonious with the Units and intended to be Common Areas for the use and benefit of all Owners of Units; and, provided further, that the maximum total number of Units that may be included in the Condominium Property is seventy-five. Addition of any portion of the Expansion Land shall be effected by Declarant after the completion of such improvements on such portion of the Expansion Land by the filing of a Supplementary Declaration, executed by Declarant, which describes or identifies the portion of the Expansion Land to be added to the Condominium Property; designates which portions of such property are to be "Units," "Common Areas," and "Limited Common Areas" consistent with such designations made herein with respect to Phase I; recomputes the Percentage Interest for each Unit theretofore and thereby made a part of the Condominium Property in accordance with Section 2 of this Article XIV; specifically incorporates the terms and conditions of this Declaration; and makes the property described therein subject to this Declaration. In addition, such Supplementary Declaration shall have attached thereto the site plan, plans and certificates required by the Act, together with such other provisions as are deemed necessary by Declarant. Upon such recording, the property described in the Supplementary Declaration shall become part of the Condominium Property as if such property had been subjected to this Declaration on the date hereof. By accepting a deed, mortgage, or deed of trust to a Unit subject to this Declaration and any applicable Supplementary Declaration, the Unit Owner, Institutional Lenders, and any owner and holder of a deed of trust or mortgage encumbering a Unit, consent and agree that such additions to the Condominium Property may be accomplished in one or more such Supplementary Declarations filed from time to time, but in no event after December 31, 1993.

2. Percentage Interest. As the result of the recording of this Declaration, the Percentage Interest of each Unit Owner in Phase I is established in the percentages of Phase I set out on Exhibit D attached hereto and incorporated herein by reference. These Percentage Interests have been computed by Declarant based upon the relative amounts of square foot heated floor area in the Units, it being conclusively presumed that the relation of the square

foot heated floor areas of Units of the same design and constructed in the same manner of the same materials is approximately the same as the relation of their fair market values. In the event that any portion of the Expansion Land is added to the Condominium Property as permitted in Section 1 of this Article XIV, and such portion of the Expansion Land includes Units to be added to the Condominium Property, the Percentage Interest of each Unit Owner in the Common Areas shall be reduced. Each Supplementary Declaration filed by Declarant pursuant to Section 1 of this Article XIV shall assign a Percentage Interest to each Unit theretofore and thereby made a part of the Condominium Property in accordance with the following formula:

$$\frac{\text{Square Foot Heated Floor Area of Unit}}{\text{Total Square Foot Heated Floor Area of All Units}} = \text{Percentage Interest for Unit}$$

For the purpose of making such computation, the Units in Phase I shall be conclusively deemed to have the amount of square foot heated floor area indicated on Exhibit D attached hereto, and the square foot heated floor area for Units to be added by any such Supplementary Declaration shall be computed by Declarant in the same manner as was used by Declarant for the computations for Phase I Units. Any Percentage Interest so computed by the Declarant may be adjusted upward or downward by no more than .0005% so that the sum of all Percentage Interests will equal 100.

By acceptance of a deed to a Unit, each Owner, for himself, his heirs, successors and assigns, agrees that Declarant, without need for further consent or joinder of any Unit Owner, may add any one or more portions of the Expansion Land to the Condominium Property, and upon the recording by Declarant of the Supplementary Declaration, the Percentage Interests shall be reduced to the Percentage Interests computed by Declarant in accordance with this Section 2 of this Article XIV as each and every such portion of the Expansion Land is annexed and made subject to this Declaration, provided, however, that in no event shall the Percentage Interest for any Unit in Phase I of the Condominium Property ever be less than the amount indicated on Exhibit D attached hereto. No Supplementary Declaration may change the Percentage Interests other than as provided in this Article XIV, unless such Supplementary Declaration is joined by one hundred percent (100%) of the Unit Owners in the manner required for amendment of the Declaration to change Percentage Interests of ownership in Common Areas and Facilities.

3. Supplementary Declaration to Add Property.

Each Owner and his respective mortgagee, by acceptance of a deed conveying a Unit or a mortgage encumbering such Unit, as the case may be, hereby authorizes, directs and empowers Declarant, in the event that Declarant exercises the rights reserved in Section 1 of this Article XIV to add to the Condominium Property, to execute, acknowledge and record for and in the name of such Owner and any such mortgagee a Supplementary Declaration for such purpose, and for and in the name of such respective mortgagee a consent and joinder to such Supplementary Declaration. Such Supplementary Declaration may amend this Declaration in such respects as Declarant may deem advisable in order to effectuate the addition of such properties to the Condominium Property.

4. Effect of Additions. In the event that any

additional lands are added to the Condominium Property pursuant to Section 1 of this Article XIV, (a) such additional lands shall be considered within the definition of Condominium Property for all purposes of this Declaration, specifically including without limitation the extension of the jurisdiction, functions, duties and membership of the Condominium Association to such annexed properties, and (b) all voting by Owners hereunder shall be aggregated, it being intended that any voting requirements need not be fulfilled separately for the real property described as Phase I and for each tract of additional lands described in a Supplementary Declaration or other documentation.

ARTICLE XV.

GENERAL PROVISIONS

1. Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of the Declaration shall bind and inure to the benefit of all Unit Owners and claimants of the land or any part thereof or interest therein and their heirs, executors, administrators, successors and assigns.

2. Duration. So long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, it shall be the duty of the Board of Directors to cause the covenants contained herein, as amended from time to time, to be extended when necessary by filing a document bearing the signatures of a Majority of the then Owners reaffirming and newly adopting the Declara-



tion and covenants then existing in order that the same may continue to be covenants running with the land. Such adoption by a Majority shall be binding on all, and each Owner of any Unit, by acceptance of a deed therefor, is deemed to agree that the Declaration and covenants may be extended as provided in this Section 2.

3. Bylaws. A true copy of the Bylaws of the Condominium Association, which together with this Declaration shall govern the administration of the Condominium, is attached hereto as Exhibit C, and, by reference, made a part hereof.

4. Enforcement. Each Owner shall comply strictly with the Bylaws and with the administrative Rules and Regulations adopted pursuant thereto and to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration or in the deed of his or her Unit. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Condominium Association or by an aggrieved Owner. Failure by the Condominium Association or by any Owner to enforce any of the foregoing shall in no event be deemed waived of the right to do so thereafter.

5. Rule Against Perpetuities. If any covenant, condition, restriction or other provision of this Declaration shall be unlawful, void or voidable, for violation of the Rule Against Perpetuities, then such provisions shall continue only until 21 years after the death of the last person of the following group of persons living at the date of the recording of this Declaration: Michael Matthew Browning, James Quarterman Freeman, and Sarah Peyton Freeman.

6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

7. Interpretation. The provisions of this Declaration and the Bylaws shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Condominium Property.

8. Captions. The captions 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 or the intent of any of the provisions hereof.

9. Law Controlling. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina; provided, however, that if there are conflicts or inconsistencies in the Act, this Declaration or the Bylaws, the terms and provisions of the Act and this Declaration (in that order) shall prevail and the Unit Owners covenant to vote in favor of such amendments as will remove such conflicts or inconsistencies, except that where the Act, the Declaration or the Bylaws conflict and the provisions of the Act are merely enabling and not mandatory, the provisions of the Declaration or the Bylaws (in that order) shall control. If any amendment is necessary to cure an ambiguity or to correct or supplement any provision of the Condominium Documents that is defective, missing, or inconsistent with any other provision thereof or of the Act, then the Board of Directors of the Condominium Association may effect an appropriate corrective amendment without the approval of the Unit Owners upon its receipt of an opinion from legal counsel to the effect that the proposed amendment is permitted by the terms of this Section.

10. Rights Reserved Unto Mortgagees.

(a) None of the following may be effected unless each Institutional Lender agrees in writing to the proposed action and any document or agreement which undertakes to accomplish any of the following shall be void and a nullity unless each such Institutional Lender agrees thereto, as evidenced by their execution of a written document specifically approving such action, to wit:

(i) Any change in the requirements of insurance coverage to be maintained by the Condominium Association as established by this Declaration.

(ii) Any amendment to the provisions of this Declaration with respect to reconstruction of improvements or termination of the Condominium Property in the event of casualty or condemnation.

(iii) Any amendment to the provisions of this Declaration with respect to entitlement to condemnation or insurance proceeds or with respect to the conditions under which the same shall be disbursed or the parties to whom such proceeds shall be disbursed.

(iv) Any amendment to the provisions of this Declaration with respect to partitioning or subdividing any Unit or the Common Areas and Facilities.

(v) Any amendment to the provisions of this Declaration with respect to a change in the percentage interests of Unit Owners in the Common Areas and Facilities, other than such an amendment by Declarant pursuant to the terms of Article XIV hereof.

(vi) Any other amendment which, if effected, will adversely alter or modify the rights and privileges granted or reserved hereunder in favor of, or with respect to, any Institutional Lender.

(b) In addition to the foregoing, each Institutional Lender and any guarantor or insurer of an Institutional Mortgage shall also be entitled to examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Condominium Association and to be furnished a copy of an annual audited financial statement and operating statement of the Condominium Association prepared by a Certified Public Accountant, with such statements to be furnished on or before April 1 of each calendar year.

(c) If any Institutional Lender, or any guarantor or insurer of an Institutional Mortgage, has served written notice of its desire to receive notices under this subsection (c) of paragraph 10 of Article XV upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Institutional Mortgage that it holds, guarantees, or insures, which notice designates the place to which notices are to be given by the Association to such party, then such party shall have the right to receive from the Association prompt written notice of the following:

(i) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by an Institutional Mortgage held, insured, or guaranteed by such party.

(ii) Any loss or damage to or condemnation or taking of the Common Areas or any loss or damage to or condemnation or taking of a Unit encumbered by an Institutional Mortgage held, insured or guaranteed by such party.

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(iv) Any proposed action by the Association, the Board, or the Owners, which under the terms of the

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Condominium Documents requires the consent of all or any portion of the Institutional Mortgagees.

(v) The call of any meeting of the membership. (Such party shall have the right to designate a non-Unit Owner representative who shall be privileged to attend.)

11. Severability. Invalidation of any covenant, condition, restriction or other provision of this Declaration or of the Bylaws shall not affect the validity or enforceability of the remaining portions thereof.

12. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Units with VA and/or FHA insured mortgage loans, then as long as Declarant owns twenty-five percent (25%) of the Units in all Phases of Hobb's Ridge Condominium but no later than December 31, 1993, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional properties, dedication of Common Area and amendment of the Declaration.

#### ARTICLE XVI.

#### SPECIAL PROVISIONS CONCERNING VETERANS' ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOME LOAN MORTGAGE CORPORATION AND FEDERAL NATIONAL MORTGAGE ASSOCIATION

In the event the Declarant shall seek to obtain approval of this Declaration and the plan of development of its property in order that the Units will be eligible for loans approved, guaranteed or insured by the Veterans' Administration ("VA"), the Department of Housing and Urban Development ("HUD"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA") or other governmental agency, it is possible that such agency or agencies will require changes in this Declaration in order to make the Units eligible for such loans. In such event, Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval by the appropriate governmental agency, in the Office of the Register of Deeds of Mecklenburg County, North Carolina. A letter from an official, or a current published regulation, guideline or statement of policy, of the VA, HUD, FHMLC, FNMA or such other agency shall be deemed con-

clusive evidence for all purposes of such agency's requirement of changes. Each Owner and his respective mortgagees, by acceptance of a deed conveying a Unit or a mortgage encumbering such Unit, as the case may be, hereby irrevocably authorize Declarant to execute any such amendment, provided that any such amendments must uniformly affect all Units and all mortgagees and shall not affect the property rights of any Unit Owner or Mortgagee.

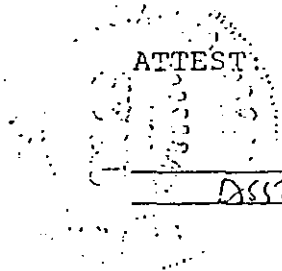
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and sealed as of the day and year above written.

SELWYN FARMS  
LIMITED PARTNERSHIP (SEAL)

(CORPORATE SEAL)

BY: BROWNING PROPERTIES, INC.  
General Partner

ATTEST



J. B. Trotter  
ASST. Secretary

By: Donald R. Browning  
President

FFB 128.  
<> 128.1  
CASH 128.

11:38 #0621 000  
04/18/24

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 18 day of April, 1984, personally came before me, Donald R. Browning, who being by me duly sworn, says that he is President of BROWNING PROPERTIES, INC., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given as general partner of Selwyn Farms Limited Partnership. And the said Donald R. Browning acknowledged the said writing to be the act and deed of said corporation.

*Brian P. Quinn*

Notary Public

My Commission Expires:

6-3-85

HOBBS RIDGE CONDOMINIUM

CONSENT OF MORTGAGEE

THE NORTHWESTERN BANK, being the Beneficiary under that certain Deed of Trust from Declarant to Kenneth N. Eller, Trustee, conveying the property described in Exhibit B attached hereto and made a part hereof, and recorded in Book 4762, at Page 579 of the Mecklenburg County, North Carolina Public Registry, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof and the provisions of the North Carolina Unit Ownership Act to said real property described in Exhibit B. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Declarant under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

*Kenneth N. Eller*

\_\_\_\_\_  
Kenneth N. Eller, Trustee

(SEAL)

(CORPORATE SEAL)

THE NORTHWESTERN BANK

Attest:

*William J. ...*  
\_\_\_\_\_  
Secretary

By: *Kenneth N. Eller*  
\_\_\_\_\_  
Vice President

STATE OF NORTH CAROLINA

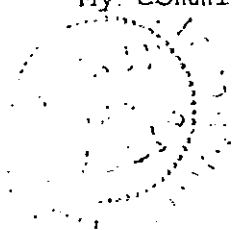
COUNTY OF MECKLENBURG

I, William E. Avant, a Notary Public for said County and State, do hereby certify that Kenneth N. Eller, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing for the purposes and uses therein set forth.

WITNESS my hand and notarial seal on this the 13<sup>th</sup> day of April, 1984.

William E. Avant  
Notary Public

My Commission Expires: 11-24-86





STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

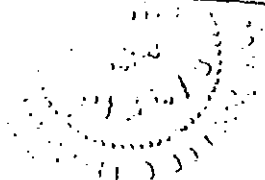
This 18th day of April, 1984, personally came before me Helen E. Avant, who, being by me duly sworn, says that he is the President of The Northwestern Bank, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said bank and said writing was signed and sealed by him in behalf of said bank by its authority duly given. And the said Helen E. Avant President acknowledged the said writing to be the act and deed of said bank.

WITNESS my hand and notarial seal.

Helen E. Avant  
Notary Public

My Commission Expires:

11-24-76



State of North Carolina, County of Mecklenburg  
The foregoing certificate(s) of Brian P. Evans and Helen E. Avant,  
Notaries Public

~~xxxxxx~~ of            said            County and State             
is are certified to be correct. This 18 day of April, 19 84  
Charles E. Crowder, Register of Deeds, By: Maryanne King  
DEPUTY Assistant

See Pages 458 thru 483

EXHIBIT A

Being located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

To locate the point of BEGINNING, commence at an existing iron pin located in the southerly margin of the right-of-way of Marsh Road, said iron pin being located in the common boundary between Lot 10 of the J. K. Wolfe property, as shown on a map thereof recorded in Map Book 230 at Page 155 of the Mecklenburg Public Registry, and the property of Selwyn Farms Limited Partnership as described in Deed recorded in Deed Book 4680 at Page 686 of the Mecklenburg Public Registry; and run thence with the southerly margin of the right-of-way of Marsh Road North 54-09-13 West 265 feet; and run thence with the arc of a circular curve to the left having a radius of 20.00 feet an arc distance of 31.42 feet to a point located in the southeasterly margin of the right-of-way of Selwyn Farms Lane; thence with the southeasterly margin of the right-of-way of Selwyn Farms Lane South 35-50-47 West 40.00 feet to the point or place of BEGINNING; thence with the southeasterly margin of the right-of-way of Selwyn Farms Lane four (4) courses and distances as follows: (1) South 35-50-47 West 272.16 feet; (2) with the arc of a circular curve to the left having a radius of 375.00 feet an arc distance of 215.88 feet; (3) South 02-51-45 West 181.58 feet; and (4) with an arc of a circular curve to the right having a radius of 175.00 feet an arc distance of 146.71 feet; thence South 07-00-00 E. 436.99 feet; thence South 67-27-24 East 406.90 feet; thence North 02-51-45 East 857.02 feet; thence North 03-25-14 East 328.40 feet; thence North 54-09-13 West 231.99 feet to the point or place of BEGINNING.

Containing 10.589 acres, more or less, and being all of Parcel D-5 as shown on survey for E. B. Moore heirs-- Selwyn Farms prepared by R. B. Pharr & Associates, P.A., dated September 9, 1982, File No. AB102-A.

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EXHIBIT B"PHASE I"

Being located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

To locate the point of BEGINNING commence at the point of intersection of the southwesterly margin of the right-of-way of Marsh Road with the southeasterly margin of the right-of-way of the easternmost segment of Selwyn Farms Lane as shown on a map thereof recorded in Map Book 20 at Page 413 of the Mecklenburg Public Registry; and run thence with said margin of Selwyn Farms Lane two (2) courses and distances as follows: (1) with the arc of a circular curve to the left having a radius of 20.00 feet an arc distance of 31.42 feet to a point; and (2) South 35-50-47 West 240.0 feet to the point or place of BEGINNING; thence with said southeasterly margin of the right-of-way of Selwyn Farms Lane South 35-50-47 West 46.0 feet to a point; thence South 54-09-13 East 137.28 feet to a point; thence South 16-55-37 East 51.34 feet to a point; thence South 86-34-46 East 194.0 feet to a point; thence North 03-25-14 East 205.00 feet to a point; thence North 54-09-13 West 114.74 feet to a point; thence South 35-50-48 West 33.36 feet to a point; thence South 54-09-12 East 7.75 feet to a point; thence South 35-50-48 West 166.64 feet to a point; thence North 54-09-13 West 125.00 feet to the point or place of BEGINNING.

All as shown on "Record Plat - Phase One-Hobb's Ridge" by Yarbrough Surveying and Engineering, dated March 7, 1984, Drawing No. 12-015.