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REGISTRATION

BOOK 2946 PAGE 564

NORTH CAROLINA

JUL 29 4 41 PM '81

WAKE COUNTY

D. C. WOODRUFF, JR.  
REGISTER OF DEEDS  
WAKE COUNTY, N.C.

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CONCANNON  
TOWNHOMES, PHASE I,  
KILDAIRE FARMS SUBDIVISION RECORDED  
IN BOOK OF MAPS 1981, PAGE 662,  
WAKE COUNTY REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by  
WITT CONSTRUCTION COMPANY, INC., a North Carolina Corporation,  
hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property in  
Cary Township, Wake County, North Carolina, which is more particularly  
described as:

Concannon Townhomes, Phase I, Kildaire Farms  
Subdivision, as shown on map recorded in  
Book of Maps 1981, Page 662, Wake County Registry

WHEREAS, the Declarant desires that the said property become a  
part of Kildaire Farms Subdivision; and

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

NOW, THEREFORE, the Declarant hereby declares that all of the  
property described above shall be held, sold, and conveyed subject  
to the provisions of that Declaration of Covenants, Conditions and  
Restrictions of Kildaire Farms Subdivision recorded in Book 2491,  
Page 388, Wake County Registry, as the same now is or is hereafter  
amended, which provisions are herein incorporated by reference, and  
subject to the following easements, restrictions, covenants, and  
conditions, all of which are for the purpose of enhancing and  
protecting the value, desirability and attractiveness of the real  
property. These easements, restrictions, covenants, and conditions  
shall run with the real property and shall be binding on all parties  
having or acquiring any right, title or interest in the described  
property or any part thereof, and shall inure to the benefit of  
each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Concannon Townhomes Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3. "Building" shall mean and refer to a multi-unit structure containing townhomes constructed or erected on the Property.

Section 4. "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 5. "Common area" shall mean and refer to all real property within Kildaire Farms Subdivision owned by the Kildaire Farms Homeowners Association, along with facilities and improvements erected thereon, for the common use and enjoyment of all members of the Kildaire Farms Homeowners Association.

Section 6. "Common expenses" shall mean and include:

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

(b) Expenses for maintenance of the townhomes as provided in this Declaration;

(c) Expenses of administration, maintenance, repair or replacement of the limited common areas;

(d) Expenses declared to be common expenses by the provisions of this Declaration of the Bylaws;

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

(f) Expenses agreed by the members to be common expenses of the Association.

Section 7. "Declarant" shall mean and refer to Witt Construction Company, Inc. a North Carolina corporation, its successors

and assigns to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or one otherwise denominated a "Declarant" hereby.

Section 8. "Limited common area" shall mean and refer to all land within the Property owned by the Kildaire Farms Homeowners Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the members of the Clancy Townhomes Association as shown on the aforementioned recorded map and the maps of additional properties hereafter annexed as hereinafter provided. Said limited common area shall be maintained by the Association.

Section 9. "Lot" shall mean and refer to any plot of land, other than the common area, shown on a recorded subdivision map of the Property and upon which a townhouse has been or may be constructed.

Section 10. "Member" shall mean and refer to every person who is a member of the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of an obligation.

Section 12. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation.

Section 14. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a lot within the property and constituting part of a building.

ARTICLE II

ANNEXATION TO KILDAIRE FARMS SUBDIVISION

Upon the filing of this Declaration in the Registry of Wake County, North Carolina, the Property herein described, and any properties hereafter annexed in conformity with the provisions of this Declaration, shall be a part of the Kildaire Farms Subdivision, a planned unit development, as described in the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, recorded in Book 2491, Page 388, Wake County Registry, as the same now is or hereafter amended, and as shown upon plans for Kildaire Farms Subdivision heretofore filed with the Town of Cary, North Carolina.

Every owner of a lot within the Property shall be a member of the Kildaire Farms Homeowners Association and shall be subject to the provisions of said Declaration for Kildaire Farms and to the Bylaws, rules, and regulations of said Homeowners Association.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional properties and improvements, including limited common area, may be annexed in the manner provided in this Article to the Property herein described. Additional properties so annexed shall be merged with the Property herein described and any other previously annexed property, and shall be subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, hereinabove referred to, and to the provisions of this Declaration and to the Articles of Incorporation and Bylaws of the Association.

Section 2. At any time within five (5) years following the date of incorporation of the Association, the Declarant may annex additional townhome properties to the Property herein described. The total number of lots within the Property herein described and that subsequently annexed shall not exceed thirty (--30--) lots. All properties annexed shall be contiguous to the Property herein described or to property previously annexed.

Section 3. In addition to annexations as provided in Section 2 of this Article, other contiguous townhome property may be annexed at any time with the express consent of two-thirds (2/3) of each class of members.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the limited common area which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association to limit the number of guests of members.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the limited common area and facilities.

(c) The right of the Association to suspend the voting rights (and right to use of any recreational facilities located upon the limited common area) by a member, or any person to whom he has delegated his voting right, for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of owners to the exclusive use of parking spaces as provided in this Article.

(e) The right of the Association to formulate, publish, and enforce rules and regulations as provided in Article XI.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers, provided, every such delegee shall reside on the Property.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common areas located in Phase I as shown

upon the recorded map referred to in the premises of this Declaration, to the Kildaire Farms Homeowners Association, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first lot in each respective Parcel, except utility and drainage easements and easements to governmental authorities, upon condition that such area as shall be designated "limited common area" shall be for the sole and exclusive use and benefit of members, so long as such area is maintained in conformity with the requirements of this Declaration, the Bylaws, and the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision, at the sole expense of the owners. Similarly, the Declarant will convey to the Kildaire Farms Homeowners Association, upon the same conditions and for the same uses and purposes, common areas which are parts of any additional properties that are annexed by it in the future.

Section 4. Parking Rights. The owner or owners of each lot shall be entitled to the use of not more than two (2) automobile parking spaces (the Association, in its discretion, may designate one [1] space for the use of each member), and the parking space shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking spaces. No boats, trailers, campers or recreational vehicles shall be parked within the limited common area, greenways or rights of way of any public or private street in or adjacent to the Property. All boats, trailers, campers or recreational vehicles shall be parked only in such areas designated for parking such vehicles and upon such terms and conditions as shall be established by Kildaire Farms Development Corporation, its successors or assigns.

Section 5. TV Antennas and Cablevision. The Association may provide cablevision or central television antennas and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

ARTICLE V

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of both the Kildaire Farms Homeowners Association and the Concannon Townhomes Association. Ownership of such interest shall be the sole qualification for such membership; no owner shall have more than one membership in each Association and there shall be only one vote per unit in such Association. Membership shall be appurtenant to and may be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE VI

VOTING RIGHTS

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

(a) Class A. Class A members shall be all owners, other than Declarant; however, Declarant shall be a Class A member to the extent provided in (b) hereinafter. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot all such persons shall be members. The vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;

provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided in Article III of this Declaration, or

(2) On January 1, 1985.

#### ARTICLE VII

##### COVENANT FOR ASSESSMENTS

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

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements.

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

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All assessments shall be shares equally by the owners of each lot.



Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; improving and maintaining the Property and the townhomes situated thereon; and providing the services and facilities for purposes of and related to the use and enjoyment of the limited common area and facilities.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. To and including December 31, 1981, the maximum annual assessment shall not be in excess of --Four Hundred Twenty and 00/100 Dollars (\$420.00) per lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1981, the annual assessment effective from any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1. However, in no event shall such increase be greater than twelve percent (12%) in any one year.

(c) Increase by Members. From and after December 31, 1981, the annual assessment may be increased by a percentage greater than that established by the Consumer Price Index formula by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which

the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

(e) Lots Owned by Declarant. Notwithstanding anything in this Article VII to the contrary, all lots owned by Declarant and held for sale shall be assessed at an amount equal to 25% of the actual monthly assessments paid by owners.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3, and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required

quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be paid in equal monthly installments and the payment of such shall commence as to each lot on the first day of the month following the conveyance of the common area of the Phase to the Homeowners Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of eight (8) percent per annum or the maximum lawful rate, whichever is less. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages and Ad

Valorem Taxes. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of the first mortgage, any lien for assessments of Kildaire Farms Homeowners Association, and ad valorem taxes on such lot. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VIII

EXTERIOR MAINTENANCE

In addition to maintenance of the limited common area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: Stain and/or paint the exterior of townhomes, repair, replace and care for roofs, decks, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights excluding electricity therefor and other such exterior improvements. Such exterior maintenance shall not include glass surfaces, doors and door frames, exterior lighting or fixtures and outlets attached to the units or repair of exterior structures of any townhouse other than the roof.

Any owner who fences or encloses any portion of his lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties

as to the townhome, the remaining yard spaces, or the limited common area. No such maintenance by an owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. The owner shall not plant any vegetation in front of his townhome except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the wilful or negligent acts of its owner or his family, tenants, contract purchasers, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, or smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE IX

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the property and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost

of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

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

Section 7. Certification With Respect to Contribution. If any owner desires to sell his lot, he may, in order to assure a prospective purchaser that no adjoining owner has a right of contribution as provided in this Article request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without charge. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article,

such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE X

ARCHITECTURAL CONTROL

No building, fence, wall, antenna, clothesline, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the said improvements or alterations shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by both the Board of Directors of the Association and the Kildaire Farms Homeowners Association or by their Architectural Committees. In the event that the said Boards or their designated committees, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Boards or their committees can arrive at a decision.

The said Boards or their committees shall have the right, at their election, to enter upon any lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE XI

USE RESTRICTIONS

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

enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each lot and the limited common area not inconsistent with the rules and regulations of the Kildaire Farms Homeowners Association. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

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

(a) All buildings and the limited common area and facilities shall be used for residential and related common purposes. Each townhome may not be subdivided and shall be used as a single-family residence and for no other purpose except that the Declarant may use one or more townhomes for offices and/or model townhomes for sales purposes.

(b) Nothing shall be kept and no activity shall be carried on in any building or townhome or on the limited common area and facilities which will increase the rate of insurance, applicable to residential use, for the property or the contents thereof. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the common area and facilities which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the common area and facilities. All garbage receptacles, containers and enclosures shall be located at the rear of the townhome.

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



or repair such portion of the property.

(d) Nothing shall be done in or to any townhome or in, to, or upon any of the common area and the facilities which will impair the structural integrity of any building, townhome, or portion of the common area and facilities or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the property, except that the Declarant or its agents may use any unsold townhome or lease up to two townhomes for sales or display purposes.

(f) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any townhome, building or any portion of the limited common area and facilities, except as may be allowed by the Kildaire Farms Homeowners Association pursuant to its bylaws; provided, however, that the Declarant and any mortgagee who may become the owner of any unit, or their respective agents, may place "For Sale" or "For Rent" signs on any unsold or unoccupied townhomes and in suitable places on the common area.

(g) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the limited common area and facilities except at the direction of with the express written consent of the Kildaire Farms Homeowners Association.

(h) The limited common area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association or the Kildaire Farms Homeowners Association pursuant to their respective bylaws.

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

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are kept in the townhome of the Owner. Further, no pens, runs or pets houses shall be allowed on any lot or on the Common Area.

ARTICLE XIII

EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the property, including lots and limited common area, shall be subject to a perpetual non-exclusive easement or easements in favor of all Owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress and to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the property to this Declaration by the Declarant or its predecessors in title and for the use of the Owner, their families, guests and tenants; and the Kildaire Farms Homeowners Association shall have the power and authority to grant and to establish in, over, upon, and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property and Kildaire Farms Subdivision.

Section 2. Encroachments. All lots and the limited common area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including,

without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, fences, and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 3. Structural Support. Every portion of a townhome which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other townhomes within the building.

Section 4. Emergencies. Every lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any lot or within any townhome and that endangers any building or portion of the limited common area.

ARTICLE XIII

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. The prior written approval of each institutional holder of a first deed of trust on units in the property will be required for the following:

(a) The abandonment or termination of the townhome property except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Any material amendment to the Declaration or to the By Laws of the Association; and

(c) The effectuation of any decision by the Association to terminate professional management and assume self management of the property.

Section 2. No unit may be partitioned or subdivided without the prior written approval of the first lien holder of the unit.

Section 3. Upon written request, any institutional holder of a first lien on a unit will be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year; and

(c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 4.

(a) In the event of substantial damage to or destruction of any unit or any part of the limited common area, the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such damage or destruction.

(b) If any unit or portion thereof or the limited common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institution holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition.

(c) The holder of a first mortgage on any unit shall be given prompt notice of any default by the unit mortgagor's obligations hereunder not cured within thirty (30) days of said default.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity,

all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety percent (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy five percent (75%) of the lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing, or reproduction. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 4. Failure to Maintain. It shall be the duty and responsibility of the Association to maintain the lots, yards, townhomes and limited common area to at least the same standard of maintenance as that of the common areas and facilities of Kildaire Farms Subdivision by Kildaire Farms Homeowners Association and in conformity with the general plan of development and maintenance for Kildaire Farms Subdivision. In the event that the Association fails to properly maintain the lots, yards, townhomes, or limited common area in conformity with these requirements, the Board of Directors of the Kildaire Farms Homeowners Association shall give written

notice of any deficiencies to the Board of the Association; and if the Association fails to remedy such deficiencies within thirty (30) days following receipt of notice, the Kildaire Farms Homeowners Association may perform the necessary maintenance for such period of time as it may in its discretion elect to do so, and the cost of such maintenance may be added to and included in the annual assessment by Kildaire Farms Homeowners Association of owners within the Association on a per lot basis.

There is hereby created an easement for entry, which shall run with the land, in favor of the Kildaire Farms Homeowners Association and its successors upon any lot, yard, townhome, and limited common area within Concannon Townhomes, Phase I, or other areas annexed hereto to perform the maintenance provided for herein.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration. Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Lease of Townhouse. No townhome shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and the occupancy of the unit shall be subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions and By Laws of Concannon Townhomes and Kildaire Farms Subdivision and any failure by any lessee to comply with the terms of such documents shall be a default under the lease.

Section 8. Conflicts. In the event there shall be any irreconcilable conflicts between either this Declaration of the Association or the Bylaws of the Association and the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision (herein-

before referred to) or the Bylaws of Kildaire Farms Homeowners Association, the provisions of the said Declaration for Kildaire Farms Subdivision and the Bylaws of said Kildaire Farms Homeowners Association shall control. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in their respective names by authority duly



WITT CONSTRUCTION COMPANY, INC.

By: A. Wayne Witt, Pres  
A. Wayne Witt, President

Charles H. Hester  
Asst. Secretary

IN WITNESS WHEREOF, Kildaire Farms Development Corporation does hereby join in the execution of the foregoing solely for the purpose of annexing, as provided in Article II hereof, the property to Kildaire Farms Subdivision in accordance with the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision recorded in Book 2491, Page 388, Wake County Registry.

This 28th day of July, 1981.

KILDAIRE FARMS DEVELOPMENT CORPORATION



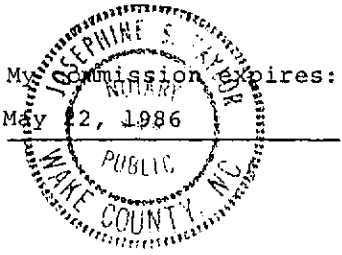
By: A. Wayne Witt, Pres  
A. Wayne Witt, President

Charles H. Hester  
Asst. Secretary

NORTH CAROLINA  
WAKE COUNTY

I, Josephine S. Taylor, a Notary Public in and for said State and County, do hereby certify that Charles L. Hinton, III personally appeared before me this day and acknowledged that he is Asst. Secretary of Witt Construction Company, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him/her self as its Asst. Secretary.

Witness my hand and notarial seal, this the 28th day of July, 1981.



Josephine S. Taylor  
Notary Public

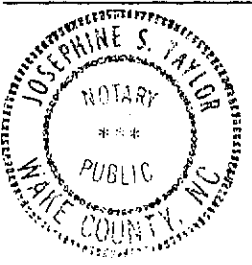
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NORTH CAROLINA  
WAKE COUNTY

I, Josephine S. Taylor, a Notary Public in and for said State and County, do hereby certify that Charles L. Hinton, III personally appeared before me this day and acknowledged that he is Secretary of Kildaire Farms Development Corporation, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by him as its Secretary.

Witness my hand and notarial seal, this the 28th day of July, 1981.

My Commission Expires:  
May 22, 1986



Josephine S. Taylor  
Notary Public

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate 5 of Josephine S. Taylor

Notar(y)(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

R. B. MCKENZIE, JR., Register of Deeds

By Shades C. Smith



NORTH CAROLINA

AMENDMENT OF THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR KILDAIRE FARMS SUBDIVISION

WAKE COUNTY

THIS AMENDMENT, executed on this the 25th day of February 1977, by and between the undersigned Owners of lots in the following developed sections of Kildaire Farms Planned Unit Development which have been annexed to the Properties of Kildaire Farms Subdivision and made subject to the Declaration of Covenants, Conditions and Restrictions for Kildaire Farms Subdivision (herein called "Declaration"), dated November 6, 1973 and recorded in Book 2202, Page 324, Wake County Registry.

WITNESSETH, that Whereas,

1. The Declaration in effect provides for the Kildaire Farms Homeowners Association (referred to in the premises of this instrument as the "Homeowners Association") to be the owner of all amenities of Kildaire Farms whereby each owner of residential property in Kildaire Farms which is annexed automatically a member of the Homeowners Association and is required to pay assessments for the maintenance of all amenities;

2. Governmental agencies which guarantee, insure or purchase loans have indicated that they would approve the developed portions of Kildaire Farms for the purpose of guaranteeing, insuring or purchasing of loans on residential property in Kildaire Farms provided that the existing Homeowners Association is changed whereby two associations are created as hereinafter set forth, whereby one association (to be known as the Kildaire Farms Racquet & Swim Club) membership in which is to be voluntary, will own and maintain designated major amenities requiring high maintenance costs, such as clubhouse, swimming pool and certain types of tennis courts, and whereby the other association (already existing and known as the Kildaire Farms Homeowners Association), membership in which is compulsory, will own and maintain landscaped areas and designated minor amenities requiring low maintenance costs, such as greenways, playgrounds, ballfields, nature trails, picnic areas and lakes;

3. The overwhelming majority of the members of the Homeowners Association desire to amend the Declaration as hereinafter set forth, and in addition thereto, create the Kildaire Farms Racquet & Swim Club, as set forth herein;

4. Kildaire Farms Company has assigned its rights as Declarant to Kildaire Farms Development Corporation by an instrument dated April 11, 1976, and recorded in Book 2409, Page 469, Wake County Registry.

NOW, THEREFORE, in consideration of the premises and the execution of this instrument by each of the parties hereto, each of the undersigned, for himself, his heirs, or successors and assigns, does hereby agree with each of the other undersigned as follows:

1. That the Declaration of Covenants, Conditions and Restrictions recorded in Book 2202 at Page 324, Wake County Registry, are hereby deleted and the following two instruments are substituted in its stead:

BOOK 2491 PAGE 389

NORTH CAROLINA  
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILDAIRE FARMS SUBDIVISION, BOOK OF MAPS 1973, VOLUME 4, PAGE 439, BOOK OF MAPS 1973, VOLUME 4, PAGE 440, BOOK OF MAPS 1973, VOLUME 4, PAGE 441, BOOK OF MAPS 1973, VOLUME 4, PAGE 452, BOOK OF MAPS 1974, VOLUME 1, PAGE 61, BOOK OF MAPS 1974, VOLUME 1, PAGE 77, BOOK OF MAPS 1974, VOLUME 1, PAGE 93; and BOOK OF MAPS 1975, VOLUME 1, PAGE 26, WAKE COUNTY REGISTRY.

THIS DECLARATION, made on the date hereinafter set forth by KILDAIRE FARMS DEVELOPMENT CORPORATION, a North Carolina corporation, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property (except for lots sold heretofore) in Cary Township, County of Wake, State of North Carolina, which is more particularly described as:

1. Woods of Kildaire Section, Phases One, Two, Three and Five, Kildaire Farms Subdivision, as shown on maps recorded in Book of Maps 1973, Volume 4, Page 439, Book of Maps 1974, Volume 1, Page 77, Book of Maps 1974, Volume 1, Page 61, and Book of Maps 1973, Volume 4, Page 441, Wake County Registry.
2. Farmington Woods Section, Phases One, Two and Three, Kildaire Farms Subdivision, as shown on maps recorded in Book of Maps 1973, Volume 4, Page 440, Book of Maps 1973, Volume 4, Page 452, and Book of Maps 1974, Volume 1, Page 93, Wake County Registry.
3. Pebble Creek Townhomes, Phase One, Kildaire Farms Subdivision, as shown on map recorded in Book of Maps 1975, volume 1 Page 26, Wake County Registry.

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

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

BOOK 2491 PAGE 390

Section 1. "Association" shall mean and refer to Kildaire Farms Homeowners Association, its successors and assigns.

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

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, including private streets, greenways and recreation areas. The Common Area of Woods of Kildaire, Phases One, Two, Three and Five are those areas designated as "greenway" and as "private streets" as the same are shown on maps recorded in Book of Maps 1973, page 439, Book of Maps 1974, page 77, Book of Maps 1974, page 61, and Book of Maps 1973, page 441, Wake County Registry. The Common Area of Farmington Woods, Phases One, Two and Three are those areas designated as "greenway" and as "private streets" as the same are shown on maps recorded in Book of Maps 1973, page 440, Book of Maps 1973, page 452 and Book of Maps 1974, page 93, Wake County Registry. The Common Area of Pebble Creek Townhomes, Phase One are those areas designated as "greenway" as the same are shown on map recorded in Book of Maps 1975, page 26, Wake County Registry.

Section 4. "Private Streets" shall mean those portions of the Common Area which are designated as street area, whether or not constructed or opened, but which are not dedicated as a public street and are not publicly maintained.

Section 5. "Limited Common Area" shall mean those portions of the Common Area that serve only a limited number of lots and which may include, but specifically is not limited to, driveways and walkways serving Patio house and Townhouse Lots, parking buildings or areas serving only specified lots, and such other similar areas as may be designated by the Association. Limited Common Areas shall be maintained at the expense of the Owners of Lots served thereby and not at the expense of the Association.

Section 6. "Racquet and Swim Club Common Area" (herein referred to as "R & S Common Area") shall mean those portions of the Common Area designated by the Declarant and approved by the Town of Cary, which serve the Owners of Lots who voluntarily join the Kildaire Farms Racquet and Swim Club and which serve persons residing outside Kildaire Farms who are permitted to join said Club pursuant to the provisions of the Articles of Incorporation of the Kildaire Farms Racquet and Swim Club and the Declaration of Covenants, Conditions and Restrictions for the Kildaire Farms Racquet and Swim Club. Racquet and Swim Club Common Area may include, but specifically is not limited to, tennis courts, swimming pool(s), clubhouse(s) and parking areas, driveways and walkways which serve members of the Kildaire Farms Racquet and Swim Club. Racquet and Swim Club Common Areas shall be maintained at the sole expense of the members of the Racquet and Swim Club and not at the expense of the Association.

Section 7. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the Common Area, Limited Common Area and R & S Common Area.

Section 8. "Detached House Lot" shall mean and refer to any lot other than lots located in sections designated for Townhouse construction, Patio house construction, and apartment construction.

Section 9. "Townhouse Lot" shall mean and refer to any lot located in an area designated for Townhouse construction, the designation of which is not changed before improvements are constructed thereon.

Section 10. "Patio House Lot" (or "Garden House Lot") shall mean and refer to any lot located in an area designated for Patio (or Garden) house construction, the designation of which is not changed before improvements are constructed thereon.

Section 11. "Lot in Use" shall mean and refer to any lot on which a dwelling unit, other than apartment, has been fully constructed and occupied as a dwelling unit.

Section 12. "Townhouse parking areas" shall mean those parking areas and driveways which are constructed on lots or on common areas but are for the benefit of the owners of Townhouse lots.

Section 13. "Patio house parking areas" shall mean those parking areas and driveways which are constructed on lots or on common areas but are for the benefit of the owners of Patio house lots.

Section 14. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Declarant" shall mean and refer to Kildaire Farms Development Corporation and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 17. "Amenities" shall mean the facilities constructed, erected, or installed on the Common Area for the use, benefit, and enjoyment of Members.

#### ARTICLE II

##### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Properties only if both two-thirds (2/3) of all of the votes entitled to be cast, in the aggregate, by Class A members and also two-thirds (2/3) of all of the votes entitled to be cast by Class B members, if any, are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all members of the Association, setting forth the time, place, and purpose of the meeting, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

For the purposes of such meeting, the presence thereof of members or proxies entitled to cast sixty (60%) percent of the votes of the Class A members and sixty (60%) percent of the votes of the Class B members, if any, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and the majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority either of the Class A or of the Class B votes, or both, required for approval of the annexation, and it appears that the required two-thirds (2/3) majority of either class may be achieved if the members not present or voting by proxy assent to the annexation, then and in that event, the members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within 120 days following the date of the meeting at which the vote was taken. Each member so assenting or dissenting shall be deemed to have cast, respectively, all of the

votes to which he is entitled under Article IV of this Declaration either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of all votes entitled to be cast by the Class A members, in the aggregate, and by the Class B members, the annexation shall stand approved.

**Section 2. Annexation by Declarant.** The Declarant may annex additional lands to the Properties in the following manner:

(a) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop additional lands within the boundaries shown on the general plan of Kildaire Farms heretofore submitted to the Town of Cary, such additional lands may be annexed to said Properties without the assent of the Class A members. Detailed plans for the development of additional lands may be submitted to the Town of Cary prior to such development if such submission is required by ordinances of the Town of Cary.

(b) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop, from time to time, an additional tract or additional tracts of land, other than as set in subsection (a) above, consisting of any portion or all of the 178.461 acres of land shown on a map entitled Kildaire Farms, Inc., and recorded in Book of Maps 1974, Page 160, Wake County Registry, such additional lands may be annexed to said Properties without the assent of the Class A members, provided, however, that such annexation shall be approved by the Town of Cary if such approval is required by ordinances of the Town of Cary and, provided further, that the development of the additional lands described in this Section shall include amenities, exclusive of lakes, equivalent in replacement cost (computed at the time that construction of the additional amenities is commenced and on the basis of the number of dwelling units being served), to those constructed on the Properties, except as hereafter stated. (For example, if the number of dwelling units constructed on the additional lands which are annexed should be one-half (1/2) the number of dwellings on the Properties, the value of the amenities constructed on account of the additional lands would be one-half (1/2) to the value of the amenities constructed on the Properties).

(c) The Declarant may annex to the Properties the additional lands described in Subsections (a) and (b) of this Section 2 by recording in the Wake County Registry a declaration of annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions therein. The additional land shall be deemed annexed to the Properties on the date of recordation of the declaration of annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the Town of Cary, and either the Veterans Administration (VA) or the Federal Housing Administration (FHA), as provided in Subsections (a) and (b).

(d) Subsequent to recordation of the declaration of annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed. It is understood, however, that the amenities which have been planned for inclusion within the general plan of Kildaire Farms referred to in this Section 2 are intended for the use of the occupants of 2,290 dwellings. Notwithstanding any provision in this instrument to the contrary, if more than 2,290 dwelling units are constructed within the boundaries shown on the general plan of Kildaire Farms referred to in Subsection (a) of this Section 2, no additional amenities shall be required on account of the annexation of additional properties outside the boundaries shown on the general plan of Kildaire Farms until the number of dwelling units within and outside said boundaries exceeds 2,290.

ARTICLE III  
MEMBERSHIP

Section 1. Members. The Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision

ARTICLE IV  
VOTING RIGHTS

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

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

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership hereunder, additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all within the times and as provided for in Article II, Section 2 above; or
- (b) on January 1, 1986.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article V, Section 1(c).

ARTICLE V  
PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to each of the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, or any portion thereof, except Private Streets, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that if any Common Area is mortgaged while the Class B membership is in existence, the execution of such mortgage shall require the same approval of the membership which is required for Special Assessments for Capital Improvements as set forth in Article VI, Section 4 of this Declaration.

(c) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member or any person to whom he has delegated his right of enjoyment for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that no conveyance of Limited Common Area shall deprive any member of the full use thereof. No such dedication or transfer shall be effective unless approved by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance. The instrument effecting such dedication, transfer or conveyance shall be sufficient if executed by appropriate officers of the Association, and contains a recital of the approval of the members;

(e) The right of the individual members to the exclusive use of parking spaces as provided in this Article;

(f) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article X.

Section 2. Delegation of Use. Any member may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area shown on the aforementioned recorded maps to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility, antenna and drainage easements and easements to governmental authorities. Similarly, Declarant will convey to the Association common areas which are parts of Kildaire Farms as those portions are annexed in the future until all common areas as shown on the plans approved by the Town of Cary have been conveyed to the Homeowners Association.

Section 4. Parking Rights. Ownership of each lot upon which a Townhouse or Patio House is constructed shall entitle the owner or owners thereof to one assigned automobile parking space and to the use of at least one additional parking space (provided, the Association, in its discretion, may permit the use of more than one additional space), and the assigned space shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas; provided, however, that the foregoing shall not be applicable if parking is available on the lot. The Association may regulate the parking of boats, trailers, and other such items on the Common Area (including the provision of special facilities for which a reasonable charge may be made). No boats or trailers shall be parked within the right of way of any public or private street in or adjacent to Kildaire Farms Subdivision.

Section 5. TV Antennas and Piped-in Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music, provided that the cost of such service shall be borne by those who subscribe to the service and not included in the annual or special assessments of the Association for all of its members.

ARTICLE VI  
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Notwithstanding any provision or inference in this Declaration to the contrary, no detached house lot, Townhouse lot, or Patio House lot, shall be subject to any annual or special assessment until and unless such lot becomes a lot in use, except as follows: Following approval of each area for annexation by both the Town of Cary and either the Veterans Administration or the Federal Housing Administration and the annexation of each such area by the Declarant, and before the sale of any lot in the area annexed, the Common Area of such annexed area shall be conveyed to the Association. Thereafter, beginning on the first day of the first month following such conveyance, the owner of every lot within the annexed areas which is not a lot in use shall pay to the Association for each lot owned a sum equal to one-fourth (1/4) of the monthly sum payable by the owner of a lot in use as annual assessment. Such payments shall continue monthly as to each such lot until each such lot becomes a Lot in Use.

The Declarant, for each Lot in Use owned within the Properties, hereby covenants, and each Owner of any Lot in Use, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments on lots in use and the annual assessments on lots which are not lots in use, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area other than Limited Common Areas shall be shared equally by the owners of each Lot in Use. All assessments which are for the maintenance or improvements of Limited Common Areas shall be shared equally by those Owners of Lots served by such Limited Common Areas.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Properties, the recreation, health, safety, and welfare of the residents in the Properties, the enforcement of these Covenants and the rules of the Association, and, in particular, for the improvement and maintenance of the Properties and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Notwithstanding any provision or inference to the contrary herein, the paramount duty of the Association is to maintain the Private Streets in at least as good condition as publicly maintained streets on Kildaire Farms Subdivision, and this duty shall have precedence over the maintenance of the remainder of the Common Area.

Section 3. Basic and Maximum Annual Assessments. To and including December 31, 1976, the basic (and maximum) annual assessment shall not be more than \$90.00 per Lot in Use, except as otherwise provided herein, the exact amount of which shall be determined from time to time as provided in subsection (c) of this Section 3.



(a) From and after December 31, 1976, the basic annual assessment may be increased by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed 5% per year or the percentage increase reflected in the U. S. City average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percent changes from selected dates (published by the U. S. Bureau of Labor Statistics, Washington, D. C.), or such Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1, whichever is greater; and such increased assessment shall be the maximum annual assessment.

(b) After December 31, 1976, the basic annual assessment may be increased by an affirmative vote of two-thirds (2/3) of the members or proxies who are entitled to vote at a meeting called for such purpose, and the increased basic annual assessment shall be the basic annual assessment. Written notice of the meeting shall be given to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the date, time, place, and purpose of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the basic and maximum assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided that any such assessments shall be adopted by a two-thirds (2/3) affirmative vote of each class of members voting in person or by proxy at a meeting duly called for this purpose, 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 time, place and purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments relating to the Common Area must be fixed at a uniform rate for all lots in Use and may be collected on a monthly basis. Similarly, annual assessments relating to the Common Areas must be fixed at a uniform rate for all other lots and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At any meeting called for the purposes stated in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates.  
 The annual assessments provided for herein shall commence as to all lots in the and other lots, then or thereafter existing, on the first day of the month following the conveyance of a portion of the Common Area. The first annual assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. If the Board of Directors of the Association shall determine that it would be inequitable to require the payment of the full amount of annual assessment (as might be the case if only a few of the recreational amenities are available for the use of members) the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association upon demand at any time shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.  
 Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien; provided, however, that the sale or transfer of any lot, pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. The owner of any lot may construct, reconstruct or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### ARTICLE VIII ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will

be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

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

#### ARTICLE IX EXTERIOR MAINTENANCE

The maintenance of lots and improvements constructed thereon shall be the duty of the owners of such lots and shall not normally be interfered with by the Association or any person. If, however, in the opinion of the Association any owner shall fail to maintain any lot owned by him in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the lot as the removal of trash, cutting of grass, pruning of shrubbery, seeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The cost incurred by the Association in rendering all such services, plus a service charge of fifteen (15%) percent of such cost, shall be added to and become a part of the assessment to which such lot is subject.

#### ARTICLE X USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties which may be or may become a nuisance or annoyance to the neighborhood.

#### ARTICLE XI EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the conveyance of Lots to subsequent owners or the conveyance of Common Area to the Association, and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

All Patio House and Townhouse lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots approved or constructed by the Declarant to the extent that such improvements actually encroach, including, but not limited to, overhanging eaves, gutters, downspouts and walls.

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An easement is hereby established for the benefit of the town of Cary over all Common Area hereby or hereafter established for setting, removing, and reading water meters, maintaining and replacing water, sewer and drainage facilities, firefighting and garbage collection.

ARTICLE XII  
RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Section 1. Notice of Default to First Mortgagees and Insurers of First Mortgages. In the event that any Member is in default in any obligation hereunder which remains uncured for a period of sixty days, every lender who is a first mortgagee as to the lot of the defaulting Member and the insurer of such first mortgage, shall be immediately notified of such default, provided that such lender and/or insurer shall have given notice to the Association that it is a first mortgagee or insurer as to the lot of such Member and shall have requested the notice of default as herein set forth.

Section 2. Right to Inspect Books of the Association. Every first mortgagee and/or insurer of a first mortgage of the lot of a Member of the Association shall have the right during regular business hours to examine the books and records of the Association.

ARTICLE XIII  
GENERAL PROVISIONS

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

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

Section 3. Exchange of Common Area for other Portions of the Properties. Notwithstanding any provision herein to the contrary, other than Section 9 of this Article XIII, it is expressly provided that the Association may convey to the Declarant, as well as any other member, in exchange for other portions of the Properties conveyed by the Declarant or other member to the Association, any portion of the Common Area theretofore conveyed to the Association, all as provided in the Articles of Incorporation of the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be Common Area and shall cease to be subject to the provisions of these Covenants relating to the Common Area, but the area thus conveyed to the Association shall become Common Area and subject to the provisions of these Covenants relating to Common Area. (The following hypothetical situation is by way of illustration, but not of limitation: Due to a surveying error, an undesirable drainage area is designated for the location of townhouse lots. Under this provision, the Declarant and the Association exchange deeds so that the townhouse lots may be relocated within the townhouse common area and the area designated for townhouse lots may be converted to common area.)

Section 4. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration

may be amended during the first thirty (30) year period by an instrument signed by the Owners of not less than ninety (90%) percent of the lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the lots; provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing, or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Wake County Registry.

Section 5. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following execution by the Owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 4 of this Article. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any lot to be examined);

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

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS  
CONDITIONS AND RESTRICTIONS OF KILDAIRE FARMS SUBDIVISION

By authority of its Board of Directors, Kildaire Farms Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_\_ percent of the Lots of Kildaire Farms Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Kildaire Farms Subdivision.

This the \_\_\_\_\_ day of \_\_\_\_\_, 1976.

KILDAIRE FARMS HOMEOWNERS ASSOCIATION

ATTEST:

BY \_\_\_\_\_

President

\_\_\_\_\_  
Secretary

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

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots in Kildaire Farms Subdivision.

Section 6 Declarant's Right to Amend Declaration with Approval of Veterans Administration or Department of Housing and Urban Development. In the

event that the Declarant shall seek to obtain approval of this Declaration and the plan of development of the Properties in order that the lots and improvements constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD"), or other governmental agency, it is likely that such agency or agencies will require changes in this Declaration in order to make the lots and improvements thereon eligible for such loans. In such event, the 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 Wake County Registry. A letter from an official of the VA, HUD, or other appropriate governmental agency, requiring an amendment as a condition of approval, shall be sufficient evidence of the approval of VA, HUD, and/or such other agency.

Section 7. Right of Declarant or Association to Amend to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, in order to qualify the Association or the Properties, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 8. Protective Covenants for Detached House Lots. Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of Detached House Lots and the size and location of buildings thereon.

Section 9. FHA/VA Approval. Notwithstanding any provision in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of Kildaire Farms for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas; exchange of Common Area for other portions of the properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XIV  
EASEMENTS APPURTENANT TO LOTS

All Private Streets and Limited Common Areas shall be subject to an easement in favor of every lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such lot, whereby the owner of each such lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to every encumbrance of whatever nature to which any of the Common Area may be subjected.

ARTICLE XV  
DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

In the event that the Association becomes insolvent, is dissolved or for any reason whatsoever loses the ownership of any of the Private Streets or Limited Common Areas referred to in Article XIV above, the Owners of lots having an interest in such Limited Common Areas and Private Streets may, at their election as determined by majority vote, form a non-profit corporation as provided in the Charter and By-Laws of the Association and assign to it the duty and authority to assess on a per lot basis all lots abutting such Common Area, whereupon such corporation shall maintain such Common Area in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

(Example: Upon loss of ownership by the Association, a majority of the Owners of lots abutting one Private Street might wish to form a corporation for the maintenance of such street, and such corporation would serve as the instrument for the maintenance of that one street rather than for the maintenance of several streets.)

Membership in such corporation would be compulsory for all Owners abutting the Private Street or Streets or having an interest in the Limited Common Area or Areas to be maintained by the corporation. Such corporation would have no powers except those provided for in this Article or reasonably incidental thereto.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on this the 8th day of February, 1977.

KILDARE FARMS DEVELOPMENT CORPORATION

BY [Signature]  
PRESIDENT

ATTEST:

[Signature]  
Secretary

STATE OF NORTH CAROLINA, Wake COUNTY (Name of State and County where acknowledgment or proof is taken)

This 8th day of February, A.D., 1977, personally came before me, James F. Williams a notary public, J. E. Herrington (Name of President or Vice President) who, being by me duly sworn, says that he is President of the Kildare Farms Development Corporation (Name of Corporation) and that the seal affixed to the foregoing or annexed 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. And the said J. E. Herrington (Name of President or Vice President) acknowledged the said writing to be the act and deed of said Corporation.



WITNESS my hand and official seal, this 8th day of February, 1977

Seal must appear here.  
Seal must be impressed sufficient for the notary's name to be readable.

James F. Williams  
Notary Public

My commission expires 11 14 80  
(Do not abbreviate)



BYLAWS OF THE  
CONCANNON TOWNHOMES ASSOCIATION

ARTICLE I  
NAME AND LOCATION

The name of the corporation is CONCANNON TOWNHOMES ASSOCIATION, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 1135 Bert Court, Cary, North Carolina, but meetings of members and directors may be held at such places within the State of North Carolina, County of Wake, as may be designated by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Concannon Townhomes Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the directors of the Association.

Section 3. "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 4. "Declarant" shall mean and refer to Witt Construction Company, Inc., a North Carolina corporation, its successors and assigns, to whom the rights of Declarant are expressly transferred or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust of one otherwise denominated a "Declarant" hereby.

Section 5. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Concannon Townhomes, amendments thereto, applicable to the Property and recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 6. "Limited common area" shall mean and refer to all land within the Property owned by the Kildaire Farms Homeowners Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the members of the Concannon Townhomes Association.

Section 7. "Lot" shall mean and refer to any plot of land, other than the limited common area, shown on a recorded subdivision map of the Property and upon which a townhome has been or may be constructed.

Section 8. "Manager" shall mean and refer to the person employed by the Board of Directors as a professional manager, pursuant to the provisions of the Bylaws, to manage the affairs of the Association.

Section 9. "Member" shall mean and refer to every person who is a member of the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 12. "Property" shall mean and refer to that certain real property platted of record in Book of Maps 1981, Page 662, Wake County Registry and described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation.

### ARTICLE III

#### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held on or before March 1, 1982, on the date and at the time and place set forth by the Board of Directors

in its rules and regulations, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:30 p.m., unless a different date and time is fixed by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be

managed by a Board of not less than three (3) nor more than fifteen (15) directors, who need not be members of the Association; but the initial Board shall consist of three (3) directors designated by the Declarant.

Section 2. Term of Office. At the first annual meeting the members shall elect one (1) director for a term of one (1) year, and two (2) directors for a term of two (2) years; and their successors shall be elected for terms of two (2) years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V

##### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for elections to

the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI

##### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

#### ARTICLE VII

##### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of any recreational facilities on the limited common area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;

(f) contract with any person, including the Kildaire Farms Homeowners Association, to maintain the limited common area, yards, and townhomes; and

(g) procure adequate hazard insurance on any townhome if the owner fails to present evidence that such insurance is in effect; and include the cost of such insurance in the annual assessment of such owner; and

(h) procure such insurance as they deem necessary, proper and/or prudent to the operation of the Association.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate errors and omissions, directors liability and liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the limited common area to be maintained;

(h) cause the yards and exterior of the townhomes to be maintained;

(i) assign parking spaces to owners in the manner provided in the Declaration when requested by a majority of the members;

(j) distribute any income or common profits, if any, pro rata among the members, or in its discretion, apply such income or profits pro rata as a credit against annual assessments for the ensuing year;

(k) designate depositories for Association funds;

(l) appoint such committees as are provided for in these Bylaws, and such other committees as shall be appropriate or necessary for the proper administration and performance of the Association;  
and

(m) exercise their powers in good faith and do and perform such other matters and things not expressly prohibited by law, the Declaration, or these Bylaws as are necessary and appropriate to the proper administration, operation, and maintenance of the Association and the Property.

#### ARTICLE VIII

##### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office without cause by the Board. Any officer may resign at any time upon giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.



Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

The president shall preside at all meetings of the Board of Directors shall see that orders and regulations of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice President

The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of an obligation, shall be a member of the Association. Ownership of such interest shall be the sole qualification for membership, and no owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE X

VOTING RIGHTS

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

(a) Class A. Class A members shall be all owners, other than Declarant, and including Declarant as provided in (b) hereinafter. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot until it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion

of the Class B membership to Class A membership as herein provided, additional lands are annexed to the property by the Declarant in the manner provided in Article II, Section 2, of this Declaration; or

(2) on January 1, 1986.

ARTICLE XI

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XII

BOOKS AND RECORDS

The books, records, and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XIII

CORPORATE SEAL

The Association shall have the seal in circular form having within its circumference the words: Concannon Townhomes Association.

ARTICLE XIV

AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XV  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of Concannon Townhomes Association, have hereunto set our hands and seals this the 28<sup>th</sup> day of July, 1981.

[Signature] (SEAL)

Max Oake (SEAL)

D. Craig Cooper (SEAL)

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of Concannon Townhomes Association, a North Carolina corporation, and

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 28<sup>th</sup> day of July, 1981,

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this the 28<sup>th</sup> day of July, 1981.

[Signature] (S)  
Acting Secretary