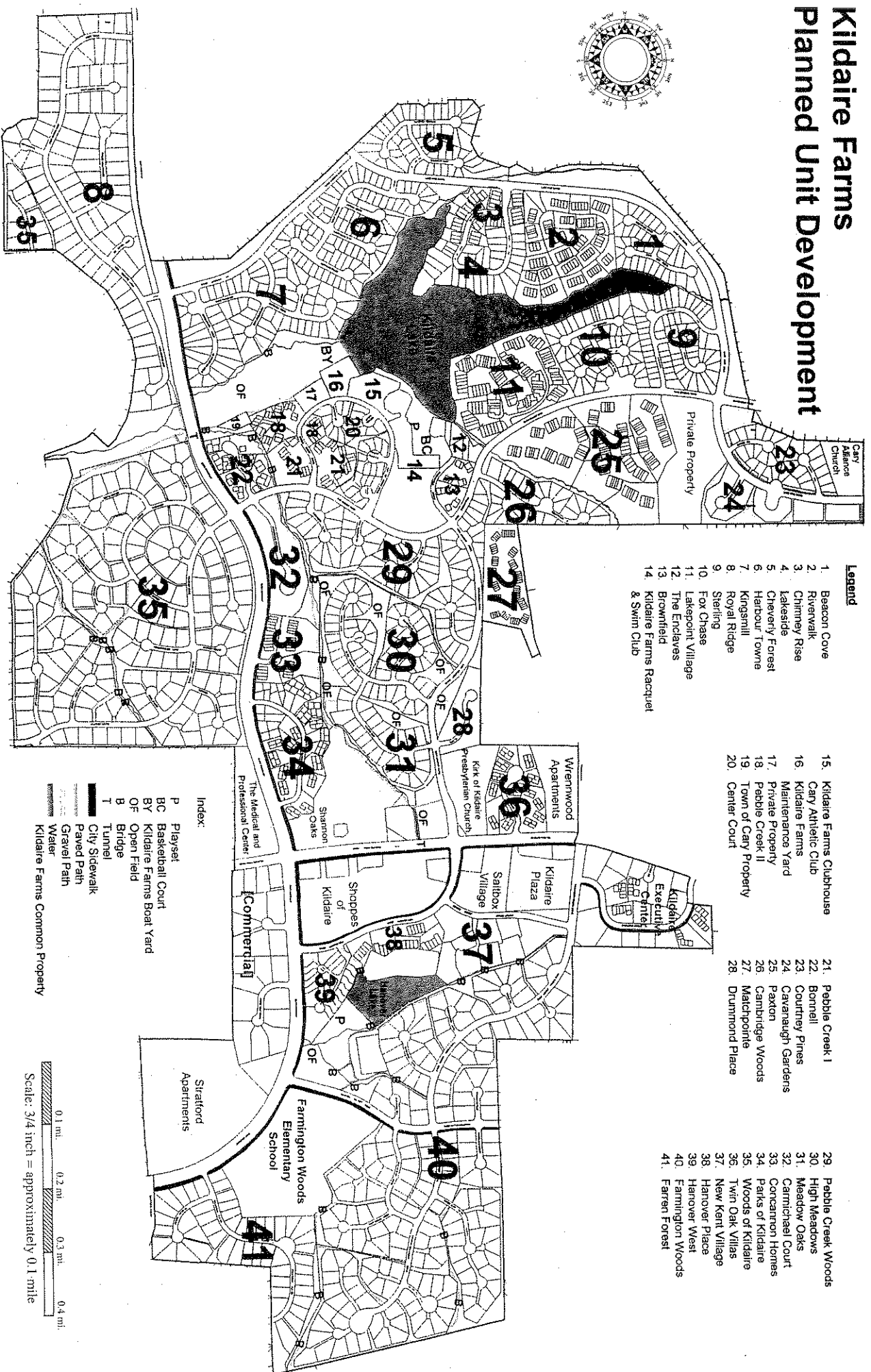
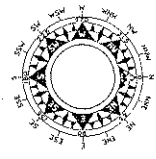
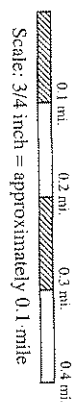


Kildaire Farms Planned Unit Development



- Legend**
- 1. Beacon Cove
 - 2. Riverwalk
 - 3. Chimney Rise
 - 4. Lakeside
 - 5. Cheever Forest
 - 6. Harbour Towne
 - 7. Kingsmill
 - 8. Royal Ridge
 - 9. Sterling
 - 10. Fox Chase
 - 11. Lakesport Village
 - 12. The Enclaves
 - 13. Brownfield
 - 14. Kildaire Farms Racquet & Swim Club
 - 15. Kildaire Farms Clubhouse
 - 16. Cary Athletic Club
 - 17. Kildaire Farms
 - 18. Maintenance Yard
 - 19. Private Property
 - 20. Pebble Creek II
 - 21. Town of Cary Property Center Court
 - 22. Pebble Creek I
 - 23. Bonnell
 - 24. Courtney Pines
 - 25. Cavanaugh Gardens
 - 26. Paxton
 - 27. Cambridge Woods
 - 28. Matchpointe
 - 29. Drummond Place
 - 29. Pebble Creek Woods
 - 30. High Meadows
 - 31. Meadow Oaks
 - 32. Carmichael Court
 - 33. Concaron Homes
 - 34. Parks of Kildaire
 - 35. Woods of Kildaire
 - 36. Twin Oak Villas
 - 37. New Kent Village
 - 38. Hanover Place
 - 39. Hanover West
 - 40. Farmington Woods
 - 41. Farren Forest

- Index:**
- P Playset
 - BC Basketball Court
 - BY Kildaire Farms Boat Yard
 - OF Open Field
 - B Bridge
 - T Tunnel
 - City Sidewalk
 - Paved Path
 - Gravel Path
 - Water
 - Kildaire Farms Common Property



NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR PEBBLE CREEK
TOWNHOMES, PHASE II, KILDAIRE FARMS
SUBDIVISION, RECORDED IN BOOK OF
MAPS 1979, PAGE 98, WAKE COUNTY
REGISTRY AND PEBBLE CREEK TOWNHOMES,
PHASE II, SECTION I, KILDAIRE FARMS
SUBDIVISION, RECORDED IN BOOK OF
MAPS 1979, PAGE 260, WAKE COUNTY
REGISTRY

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

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain property in
Cary Township, Wake County, North Carolina, which is more
particularly described as Phase II, as the same is shown on
map recorded in Book of Maps 1979, Page 98, Wake County Registry,
and as Phase II, Section I, as the same is shown on map recorded
in Book of Maps 1979, Page 260, Wake County Registry; and

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 Pebble Creek Townhomes Phase II 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 or 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. "Common profits" shall mean and refer to the balance of all income, rents, profits, and revenues of the

Association remaining after the deduction of the common expenses or reserves therefor. Common profits shall not mean or include any sums lawfully assessed against members by the Association.

Section 8. "Declarant" shall mean and refer to Kildaire Farms Development Corporation, 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 9. "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 Pebble Creek Townhomes Phase II Association as shown on the aforementioned recorded map and the maps of additional properties hereafter annexed as hereinafter provided.

Section 10. "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 11. "Member" shall mean and refer to every person who is a member of the Association.

Section 12. "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 13. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 14. "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 15. "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 Bylaws of the Association.

Section 2. At any time within ten (10) 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 two hundred fifty (250). 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 II and Phase II, Section I, as shown upon the recorded maps 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 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 spaces. The Association may regulate the parking of boats, trailers, and other such items on the limited 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 rights of way of any public or private street in or adjacent to the Property.

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 Pebble Creek Townhomes Phase II Association. Ownership of such interest shall be the sole qualification for such membership, and no owner shall have more than one membership in each 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, with the exception of the Declarant. 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 such time as the townhome constructed on the lot is fully completed and actually occupied as a residence, 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, Section 2, of this Declaration, or

(2) On January 1, 1991.

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 upon which a townhome, ready for occupancy, has been constructed, 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; and
- (c) Special assessments for purchase and reconstruction of townhomes as hereinafter provided.

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

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

expressly assumed by them. All assessments shall be shared equally by the owners of each lot.

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 common area and facilities.

Section 3. Amount of Assessment.

(a) Initial Assessment. To and including December 31, 1979, the initial annual assessment shall not be in excess of Four Hundred Twenty and 00/100 (\$420.00) Dollars 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, 1979, 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 twice 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.

(Explanatory Note - It is the objective of this paragraph (b) to enable the Board of Directors to increase dues sufficient to assure the maintenance to which every homeowner is entitled. On the other hand, the Board of Directors should not have unlimited authority to raise dues without the consent of at least two-thirds of the homeowners. The Consumer Price Index, which is published

by the Federal Government, reflect rises and falls in the cost of living. However, it is formulated by tabulating the price of many factors, such as wages, food, clothing, housing, etc. The items included in the Consumer Price Index, which would directly affect the need to lower or raise the dues of homeowners in order to properly maintain homes, landscaping, parking areas, and other common facilities, would be such items as costs of labor, roofing, and landscape maintenance. Conceivably, during some years the cost of these items may rise more than the average increase in the Consumer Price Index.

To allow for such a possibility, the Declarant has provided that the Board of Directors may raise dues from year to year in order to assure proper maintenance and thereby protect property values of the homeowners. On the other hand, the Declarant feels that the homeowners must be protected against any excessive increases in dues by the Board of Directors without the consent of the homeowners. To accomplish such objectives it is essential to use some formula. The Consumer Price Index is used by many associations because it provides a generally accepted measurement of the rise in cost of living.

If the Consumer Price Index formula should ever prove inadequate to provide for the maintenance which the Board of Directors feels is necessary, the Board must then obtain the consent of two-thirds of the homeowners as provided in paragraph (c) of this Section 3 in order to increase dues to an amount greater than is permitted under the Consumer Price Index formula).

(c) Increase by Members. From and after December 31, 1979, 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 limita-

tions 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.

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. Special Assessments for the Purchase and Reconstruction of Townhomes. In the event that any townhome located on the Property is substantially destroyed by fire or other hazard, the owner shall give written notice to the Association within thirty (30) days following such destruction of whether he intends to repair or reconstruct the townhome; and if the owner fails to give such notice to the Association it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the

townhome. If the owner elects not to repair or reconstruct the townhome, the Association shall have the first right and option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the owner's election not to repair or reconstruct.

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

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

determine to be appropriate.

Such assessment shall be in addition to, and not in lieu of, the annual assessments provided for in Section 3 or the special assessments provided for in Section 4 of this Article.

(b) Determination of Value. The owner of the townhome shall convey marketable title thereto to the Association upon payment to the owner by the Association of the fair market value of the lot and townhome in its damaged condition as determined by a MAI appraiser selected by the owner and approved by the Board. In the event that the Board and the owner are unable to agree upon an appraiser, each shall select a MAI appraiser and the two (2) appraisers so selected shall select a third MAI appraiser, and the three (3) appraisers shall jointly appraise and determine the fair market value of the lot and townhome in its damaged condition. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

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

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the owner may retain the lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family townhome unit.

The reconstructed or repaired townhome unit shall be substantially identical to the destroyed townhome unit, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(e) Retention by Owner. If a townhome is not habitable by reason of damage, and the owner gives notice of his election to repair or reconstruct the townhome, the obligation of the owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the townhome is restored to a habitable condition, whichever shall first occur. In the event a townhouse is damaged or destroyed, and the owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the lot, so that it shall be placed in a neat, clean, and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the townhome until paid by the owner, unless the townhome is thereafter acquired by the Association.

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

personally obligated therefor.

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

(g) Application of Declaration and Bylaws. Any townhome which has been destroyed, in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall be subject to the provisions of this Declaration and to the Bylaws of the Association.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 7. Quorum for any Action Authorized Under Sections 3, 4, and 5. At the first meeting called, as provided in Sections 3, 4, and 5 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, 4, and 5, 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 8. 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 second month following the conveyance of such lot. 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 9. 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 percent (8%) per annum. 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 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any mortgage or mortgages and any lien for assessments of Kildaire Farms Homeowners Association 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 11. 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, trees, shrubs, grass, walks, and other such exterior improvements. Such exterior maintenance shall not include glass surfaces, or repair of exterior structures of any townhouse other than the roof.

Any owner who fences or encloses the rear 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 rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. The owner shall not plant any vegetation 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 Boards 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 shall be used as a single-family residence and for no other purpose, except that the Declarant or its successors and assigns or agents 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.

(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, its successors or assigns or its agents may use any unsold townhome 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 its successors or assigns 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.

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 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 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 to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, 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

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. Insurance. Every owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his townhome except that the amount shall not be required to exceed the replacement cost of the townhome. An owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the owner and shall constitute a lien against his lot until paid.

Section 3. 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 4. 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 5. 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 Pebble Creek Townhomes Phase II to perform the maintenance

provided for herein.

Section 6. Amendment of Declaration Without Approval of Owners.

The Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the property or to qualify the property or any lots and improvements thereon for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

No amendment made pursuant to this Section shall be effective until duly recorded in the Register of Deeds of Wake County.

Section 7. Amendment to Achieve Tax-Exempt Status. The Declarant for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, 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. 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 (hereinbefore 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 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 given.

KILDAIRE FARMS DEVELOPMENT CORPORATION

By: _____
President

Attest:

Secretary

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public in and for said County and State, 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 James E. Harrington, President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal, this the _____ day of June, 1979.

My commission expires:

Notary Public

Austin Building Company, a North Carolina general partnership, hereby enters into this Declaration for the purpose of assenting to the subjection of the lots owned by it shown on the recorded maps set forth in the premises of this Declaration to all of the terms, conditions and restrictions of this Declaration; all lots hereby subjected shall be conveyed subject to this Declaration; and further Austin Building Company does hereby assign any right and duties as Declarant to Kildaire Farms Development Corporation.

This the _____ day of June, 1979.

AUSTIN BUILDING COMPANY, a North Carolina general partnership

By: _____
Dan C. Austin, Partner

By: CAMBRIDGE PROPERTIES, INC., Partner

By: _____
James E. Harrington, President

Attest:

Charles L. Hinton, III, Secretary

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public in and for said State and County do hereby certify that Dan C. Austin, a partner of Austin Building Company, a partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership by authority duly given. This _____ day of June, 1979.

My Commission Expires: _____
Notary Public

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public in and for said County and State, certify that Charles L. Hinton, III personally came before me this day and acknowledged that the foregoing instrument was executed in the name and on behalf of Cambridge Properties, Inc., a Partner; that he, the said Charles L. Hinton, III, is the Secretary of Cambridge Properties, Inc., and that by authority duly given and as an act of the corporation, the foregoing instrument was signed by its President, sealed with its corporate seal, and attested by himself as its Secretary, and that the said instrument is the act and deed of said corporation acting as a Partner of Austin Building Company. This the _____ day of June, 1979.

My Commission Expires: _____
Notary Public

Carolina Federal Savings and Loan Association of Raleigh,
as the holder of two (2) promissory notes secured by deeds of trust
on the lots shown on the recorded maps set forth in the premises of
this Declaration, which are encompassed by the property herein being
subjected to this Declaration, said deeds of trust being recorded
in Book 2707, Page 478, and Book 2721, Page 257, Wake County Registry,
and G. Eugene Boyce, trustee under the deeds of trust, joins in the
execution hereof for the purpose of subjecting the aforesaid deeds
of trust to the terms and provisions of this Declaration of Covenants,
Conditions and Restrictions.

CAROLINA FEDERAL SAVINGS AND LOAN
ASSOCIATION OF RALEIGH

By: _____
President

Attest:

Secretary

Trustee (S)

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public in and for
said State and County, do hereby certify that _____
personally appeared before me this day and acknowledged that he/she
is _____ Secretary of Carolina Federal Savings and Loan Association
of Raleigh, 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 _____ Secretary.
This the _____ day of June, 1979.

My commission expires:

Notary Public

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public in and for
said State and County, do hereby certify that _____
Trustee for Carolina Federal Savings and Loan Association of Raleigh,
personally appeared before me this day and acknowledged the due
execution of the foregoing instrument. This the _____ day of June,
1979.

My commission expires:

Notary Public