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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

AUBURN PLACE

Prepared by / upon recording, please return to:

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"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	4
"C"	Initial Restrictions and Rules	3
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

AUBURN PLACE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 05th day of NOVEMBER, 2004, by Threatt Vail Lane, LLC, a North Carolina limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Threatt Vail Lane, LLC, as the developer of Auburn Place, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of Auburn Place as a planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a general plan of development for the planned community known as Auburn Place. An integral part of the development plan is the creation of Auburn Place Homeowners Association, Inc., an association comprised of all owners of real property in Auburn Place, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document establishes a planned community under the North Carolina Planned Community Act, N.C.G.S. §47F-2-101, *et seq.*

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of Auburn Place in the future by amendment of this Declaration or Supplemental Declaration, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Auburn Place, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration and the planned community established by this Declaration in accordance with the procedures set forth in Article XIX.

1.3. Governing Documents.

The Governing Documents for Auburn Place consist of:

- this Declaration and such Supplemental Declarations as may be recorded from time to time;
- the Association's Articles of Incorporation and By-Laws;
- the Restrictions and Rules described in Article III;
- the Architectural Guidelines described in Article IV; and
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended. In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above.

Some areas within Auburn Place may be subject to additional covenants, restrictions and easements. If there is a conflict between the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control; however, if one document is simply more restrictive than another, the more restrictive shall control.

The Governing Documents apply to all Owners and occupants of property within Auburn Place, as well as to their respective tenants, guests and invitees. If a Unit is leased, the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents and the lease shall so provide.

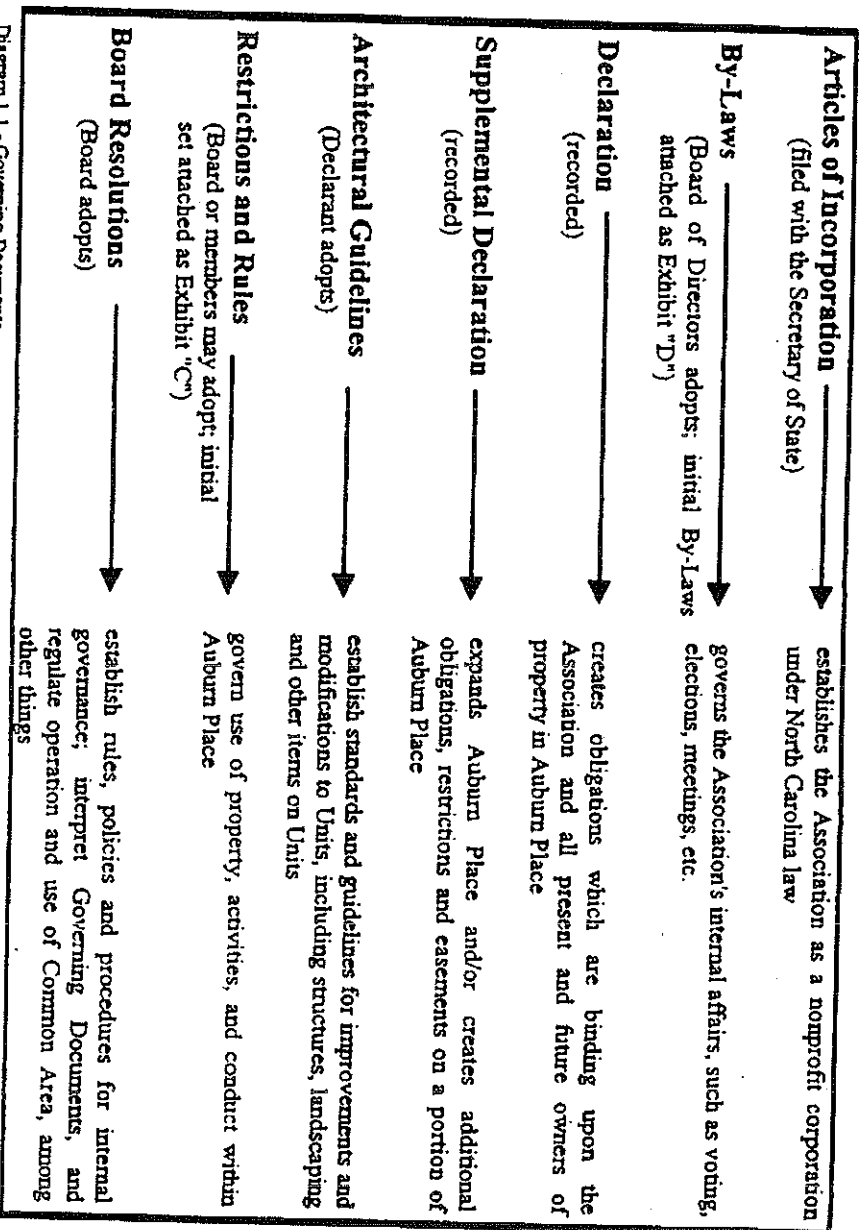
The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.5 and elsewhere in the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

GOVERNING DOCUMENTS



Article II Concepts and Definitions

2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Guidelines": The guidelines and standards for design, construction, landscaping, and exterior items placed on Units adopted pursuant to Article IV, as they may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": the Articles of Incorporation of Auburn Place Homeowners Association, Inc., filed with the Office of the Secretary of State, State of North Carolina, as they may be amended.

"Association": Auburn Place Homeowners Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

"Auburn Place": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

"Builder": Pulte Home Corporation, a Michigan corporation, or any other Person who purchases one or more Units from the Declarant or a Builder for the purpose of constructing a dwelling thereon for later sale to consumers, or who purchases one or more parcels of land within Auburn Place from the Declarant for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Auburn Place Homeowners Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period shall terminate not later than 90 days after the first to occur of the following:

- (a) the date that 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or
- (b) 20 years from the date of recording of this Declaration; or
- (c) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

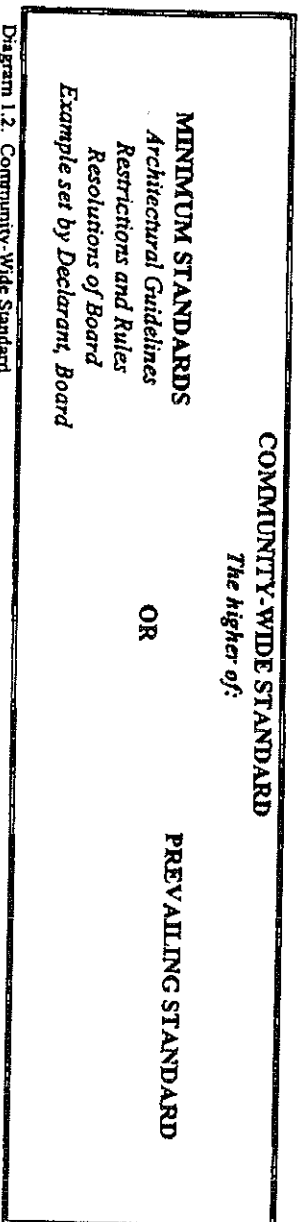
Temporary suspension of the Class "B" Membership pursuant to Section 6.2(a) shall not affect the Class "B" Control Period.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial

development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes in the Association. Payments due under leases of capital improvements such as street lights shall not be considered an initial development expense or original construction cost.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in Auburn Place, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Auburn Place change.



"Declarant": Threatt Vail Lane, LLC, a North Carolina limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who the immediately preceding Declarant designates as Declarant in a recorded instrument.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

"Development and Sale Period": The period of time during which Declarant, Declarant Affiliate, or Builder owns property subject to this Declaration or Declarant holds an unexpired option to unilaterally expand the Community pursuant to Section 9.1.

"Eligible Mortgage Holder": a holder, insurer or guarantor of a first priority Mortgage on a Unit who has submitted a written request to the Association to notify it of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders pursuant to Article XV. The term "Eligible Mortgage" shall refer to the Mortgage held by an Eligible Mortgage Holder.

"General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, the Restrictions and Rules, and Board resolutions, all as they may be amended.

"Limited Common Area": A portion of the Common Area assigned, pursuant to Article XII, for the primary benefit or use of one or more, but less than all, Units.

"Master Plan": The land plan for the development of Auburn Place approved by Mecklenburg County, North Carolina, as it may be supplemented or amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to submit such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

"Restrictions and Rules": The initial restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"Service Area": A group of Units designated as a separate Service Area pursuant to this Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Unit may be assigned to more than one Service Area. Where the context permits or requires, the term "Service Area" shall also refer to any Service Area Committee established in accordance with the By-Laws to represent the interests of Owners of Units within a Service Area. Service Area boundaries may be established and modified as provided in Section 7.3.

"Service Area Assessments": Assessments levied against the Units in a particular Service Area to fund Service Area Expenses, as described in Section 8.2.

"Service Area Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration, designates Service Areas, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Unit": A portion of Auburn Place, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or Declarant's site plan, whichever is more recent, until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and the number of Units in any remaining portion shall continue to be calculated in accordance with this paragraph.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration or the Restrictions and Rules). In the absence of recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recording or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Office of the Register of Deeds for Mecklenburg County, North Carolina, or such other place as may be designated as the official location for filing documents affecting title to real estate in Mecklenburg County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, architecture, landscaping and other aesthetic matters at Auburn Place are what give the community its identity and make it special. Each Owner and resident participates in upholding such standards and can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for the community standards to evolve over time.

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Auburn Place, a framework of affirmative and negative covenants, easements and restrictions that govern Auburn Place. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, and trends. Therefore, this Article establishes rulemaking authority and procedures for modifying and expanding the initial Restrictions and Rules set forth in Exhibit "C." This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1(c), nor to administrative policies which the Board may adopt by resolution to interpret, define or implement the Restrictions and Rules.

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty pursuant to Section 6.1 of the By-Laws to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice to all Owners concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) In addition to the Board's authority under subsection (a) above, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of persons entitled to cast more than 50% of the total Class "A" votes in the Association. In addition, during the Development and Sale Period, any such action shall require the written consent of Declarant.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

3.3. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by housing type or area.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) Signs. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs and the Architectural Guidelines may establish design criteria for such signs.

(d) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance to persons outside the Unit.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, rules may restrict leasing of multiple Units by related or affiliated Persons and may require a minimum lease term of up to 12 months. The Association may also require that Owners use lease forms approved by the Board.

(h) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(i) Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop Auburn Place, nor restrict Declarant or such Builders as Declarant may so authorize from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or such Builders as

Declarant may so authorize from maintaining temporary structures for use during construction of a Unit or from using any home as a sales office.

The limitations in subsections (a) through (h) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVIII.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Auburn Place, except in compliance with this Article and the Architectural Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All construction on Units shall comply with all applicable building codes and requirements.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges that Declarant has a substantial interest in ensuring that the improvements within Auburn Place enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property in, or in the vicinity of, Auburn Place. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of Auburn Place or any real property subject that may be made a part of to Auburn Place pursuant to Section 9.1 and until a certificate of occupancy has been issued for a dwelling on every Unit, unless earlier terminated in a written instrument that Declarant executes and records.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "ARC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of Auburn Place as well as specific provisions that vary by housing type and from one area to another within Auburn Place. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines so long as it has any rights under this Article, as described in Section 4.2(a), notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the consent of the Board.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The initial Architectural Guidelines, and any subsequent changes, shall be recorded. The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within Auburn Place.

(b) Procedures. Except as otherwise specifically provided in this Declaration or the Architectural Guidelines, no activities shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved any application within the scope of matters delegated to the ARC by Declarant. The notice shall be accompanied by a copy of the application and any additional information that Declarant may require. Declarant shall have 10

days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the ARC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means.

In the event that the Reviewer fails to give notice of its approval or disapproval of any application within the time period required above, the applicant may notify the Reviewer by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Architectural Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the Reviewer's receipt of the applicant's notice, as evidenced by the return receipt, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5.

If construction does not commence on a project for which Plans have been approved within nine months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may (i) pre-approve Plans for Builders and excuse such Builders from all or a portion of the application and review procedures set forth in this Section with respect to construction undertaken in accordance with such pre-approved Plans; and (ii) by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Reviewer may elect not to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of

applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Auburn Place; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Neither Declarant, the Association, the Board, any committee, nor any member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in Auburn Place; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association as provided in Article VI of the By-Laws.

Article V **Maintenance and Repair**

5.1. Maintenance by Owners.

Except to the extent that such maintenance responsibility is otherwise assigned to the Association pursuant to Section 7.2 or any Supplemental Declaration applicable to the Unit, each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to Article IV.

5.2. Responsibility for Repair and Replacement Insurance.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association is obligated to carry such insurance pursuant to any Supplemental Declaration or other covenants applicable to the Unit, or unless the Association otherwise notifies the Owner in writing that it is carrying such insurance on the Unit (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

In the event of damage to or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

Additional covenants applicable to any Unit may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Unit and for clearing and maintaining the Unit in the event the structures are not rebuilt or reconstructed.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of Auburn Place. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the owners of property in Auburn Place.

Article VI The Association and its Members

6.1. Function of Association.

The Association has been established to administer Auburn Place in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility; and
- (b) interpretation and enforcement of the Governing Documents; and
- (c) establishing and upholding the Community-Wide Standard; and
- (d) upon delegation or termination of Declarant's authority under Article IV, administering the architectural review process for Auburn Place, as provided in that Article.

6.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, except that Declarant shall not be considered a Class "A" Member during any period that the Class "B" Membership is in effect and not under temporary suspension. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Unit, subject to automatic reinstatement upon Declarant's acquisition of any Unit or annexation of additional property pursuant to Article IX; however, such temporary suspension shall not suspend, terminate, or otherwise affect the Class "B" Control Period. The Class "B" membership shall terminate upon the earlier of:

- (i) the date that 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or
- (ii) 20 years from the date of recording of this Declaration; or
- (iii) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" membership.

Upon termination of the Class "B" membership, Declarant shall hold a Class "A" membership for each Unit that it owns.

(b) Automatic Membership. Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "A". Each Unit owned by a Class "A" Member is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

No vote shall be exercised for any property that is exempt from assessment under Section 8.7.

(b) Class "B". The Class "B" Member shall not have voting rights relative to the number of Units it owns; rather, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVII. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision

of goods or services for the general benefit or convenience of owners, occupants and residents of Auburn Place.

(b) Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area that Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area; and
- (b) all streets and alleys within Auburn Place unless and until such time as they are accepted by a public body for perpetual maintenance; and
- (c) any landscaping, signage, street lights and sidewalks within public rights-of-way or sidewalk easements lying within or abutting the property subject to this Declaration, except to the extent such responsibility is assumed by a governmental body or utility provider; and
- (d) any pipes, lines, pumps, or other apparatus comprising any irrigation system serving the Common Area, to the extent located within Common Area, rights-of-way, or easements granted to the Association, and serving Units, if there is a common irrigation system serving the Units; and
- (e) the grass and grounds on that portion of each Unit which is not located inside a fence. Such maintenance shall consist of normal grass mowing and such other activities as the Board deems appropriate to keep such grounds in a condition satisfactory to the Board. The Association shall have no responsibility for maintaining trees, flowers, shrubbery, or other plant material on a Unit, which shall remain the responsibility of the Owner under Section 5.1; and

(f) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(g) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Notwithstanding the above, some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, or any Builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Voting Members representing 75% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. The costs that the Association incurs or expects to incur for maintenance, repair and replacement of Limited Common Areas shall be a Service Area Expense assessed against the Units within the Service Area to which the Limited Common Areas are assigned.

7.3. Provision of Benefits and Services to Service Areas.

(a) The Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the submitted property to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Units in addition to those which the Association generally provides to all Units. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Units within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (a) special benefits or services which are not provided to all Units, or (b) a higher level of service than the Association otherwise provides. Upon receipt of such petition signed by Owners of a majority of the Units within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least 67% of the Units within the proposed Service Area, the Association shall provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services shall be assessed against the Units within such Service Area as a Service Area Assessment, subject to the right of the Owners of Units within the Service Area to veto the budget for their Service Area as provided in Section 8.2.

7.4. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; and

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law; and

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area, which insurance shall comply with the requirements of Section 7.4(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Service Area shall be a Service Area Expense; and (ii) premiums for insurance on Limited Common Areas shall be a Service Area Expense of the Service Area to which such Limited Common Areas are assigned, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Charlotte, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.4(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the

applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Service Area shall be for the benefit of the Owners within the Service Area and their Mortgages, as their interests may appear; and
- (iii) be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgages individually; and
- (iv) contain an inflation guard endorsement; and
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause; and
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); and
- (vii) provide a waiver of subrogation under the policy against any Owner or occupant of any Unit; and
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests; and
 - (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and
 - (iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and
 - (iv) a cross liability provision; and
 - (v) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.
- (c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 80% of the Units, including the 100% of the Units to which any Limited Common Area is assigned, if the damaged improvements are Limited Common Area, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as follows: (i) to the extent that the excess insurance proceeds are attributable to damaged improvements on Limited Common Area that are not rebuilt, they shall be distributed to the Owners of Units to which such Limited Common Area was assigned or to their Mortgagees, as their interests may appear; and

(ii) the remainder shall be distributed to all of the Owners or their Mortgagees, as their interests may appear, at an equal rate per Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.4(a).

7.5. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents as set forth in this Section 7.5 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and

(ii) suspending the vote attributable to a violating Owner's Unit, suspending the privilege of using any recreational facilities within the Common Area, and suspending any services which the Association provides to an Owner or the Owner's Unit, during any period that the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents; and

(iii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in Auburn Place; and

(iv) levying Specific Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, their guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIV, if applicable.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(f) ~~The Association, by contract or other agreement, may enforce applicable county ordinances and permit Mecklenburg County to enforce ordinances within Auburn Place for the benefit of the Association and its Members.~~

7.6. Implied Rights, Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or North Carolina law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.7. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the General Assessment if provided to all Units. By way of example, such services and facilities might include trash collection, landscape maintenance; pest control service; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.9. Use of Technology.

The Association may, as a Common Expense, provide for or offer services that make use of technological opportunities to facilitate the goals and fulfill the responsibilities of the Association. For example, to the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; collect assessments by electronic means; sponsor a community cable television channel; create and maintain a community intranet or Internet homepage; and maintain an "online" newsletter or bulletin board.

7.10. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within Auburn Place designed to enhance the level of safety or security that each person provides for himself and his property. However, no representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Auburn Place or any portion thereof, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Association, the Declarant, the Builders, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of safety or security within Auburn Place, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Auburn Place and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

Article VIII Association Finances

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 7.4; the cost of water or other utilities provided to the Area of Common Responsibility, and to Units if

metered through a master meter and billed to the Association; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Properties; expenses incurred in exercising architectural control under Article IV; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Properties in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Properties.

There shall be four types of assessments: (a) General Assessments; (b) Service Area Assessments; (c) Special Assessments as described in Section 8.3; and (d) Specific Assessments as described in Section 8.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(b) Personal Obligation and Lien. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of Auburn Place, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments or other charges levied on the Unit. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(c) Declarant's Obligations for Assessments. During the Class "B" Control Period, Declarant may satisfy its obligation for General Assessments and Special Assessments for Common Expenses on any Units that it owns in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner, in accordance with the applicable rate of assessment under Section 8.5.

8.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of assessments.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment at an equal rate per Unit, subject to discount for unoccupied Units as provided in Section 8.5.

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant

to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Calculation of Service Area Assessments. Except as may otherwise be provided in this Declaration or any applicable Supplemental Declaration, the total amount of estimated Service Area Expenses for each Service Area shall be allocated equally among all Units in the benefited Service Area which are subject to assessment under Section 8.5, to be levied as a Service Area Assessment; provided, unless otherwise specified in the applicable Supplemental Declaration, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts that the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment Ratification. Within 30 days following the Board's adoption of any budget, the Board shall send a summary of the applicable budget, together with notice of the amount of the General Assessment or Service Area Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

If the proposed General Assessment does not exceed the applicable Maximum General Assessment described below, the budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Units then subject to the Declaration. The Service Area Expense budget for each Service Area shall be deemed ratified unless rejected by Owners of at least 75% of the total number of Units in the Service Area to which the budget applies, except that the right to reject a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

If the proposed General Assessment exceeds the Maximum General Assessment described herein, such budget and General Assessment shall be effective only upon approval of Owners entitled to cast at least 67% of the Class "A" votes represented at the meeting. The Maximum General Assessment shall be \$960.00 for the 2004 fiscal year and shall automatically increase for each subsequent fiscal year by ten percent or the percentage increase in the Consumer Price Index during the previous fiscal year, whichever is greater (the "Maximum General Assessment"). The "Consumer Price Index" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region; Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or

shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index.

If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the General Assessment or Service Area Assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Service Area if such Special Assessment is for Service Area Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and during the Development and Sale Period, the written consent of Declarant. Except as otherwise provided in Section 8.5, Special Assessments shall be levied equally on all Units subject to such assessment.

8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) for monetary fines imposed pursuant to Section 7.5 and to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) pursuant to Section 8.8.

8.5. Payment of Assessments.

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later; provided, until the first day of the first month following the month in which the Unit is improved with a dwelling and conveyed by the Builder for residential occupancy or the Unit is first occupied for residential purposes, whichever is earlier, such Unit shall be assessed only 25% of the full General Assessment rate, shall pay only 25% of any Special Assessment for Common Expenses that would otherwise be payable during such period, and shall not be assessed for any Service Area Expenses. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.6. Lien for Assessments.

(a) Subject to North Carolina law, as it may be amended, the Association shall have a lien against each Unit in favor of the Association to secure payment of assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys fees and expenses). Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

(b) If any assessment or other charge due to the Association remains unpaid for a period of 30 days or longer after the due date thereof, the Association may perfect its lien by executing and recording a claim of lien setting forth the amount due. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with North Carolina law, as it may be amended

(c) ~~The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the~~

Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.7. Exempt Property.

The following property shall be exempt from payment of General Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

8.8. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of Three Hundred Dollars (\$300.00). This amount shall be in addition to, not in lieu of, the annual General Assessment and any applicable Service Area Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Auburn Place and to accommodate changes in the master plan that inevitably occur as a community such as Auburn Place is developed.

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may from time to time expand Auburn Place to include all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Auburn Place pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also expand Auburn Place to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the Class "A" votes in the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of Auburn Place to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such

additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

During the Development and Sale Period, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the real property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10%. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Right to Veto Changes in Standards.

During the Development and Sale Period, the Declarant shall have the right to veto any amendment to or modification of the Restrictions and Rules or Architectural Guidelines.

10.3. Development and Sales Activities.

During the Development and Sale Period:

- (a) Declarant and Builders whom the Declarant so authorizes may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

10.4. Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Auburn Place without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

10.5. Right to Transfer or Assign Declarant Rights.

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

10.6. Exclusive Rights To Use Name of Development.

No Person other than Declarant, its authorized agents, and Builders, shall use the name "Auburn Place," any derivative of such names, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Auburn Place" in printed or promotional matter where such term is used solely to specify that particular property is located within Auburn Place. The Association shall also be entitled to use the words "Auburn Place" in its name.

10.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Auburn Place in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.6.

10.8. Right of Convert Unit to Common Area or Roadway.

Declarant reserves the right to convert any Unit which it owns to Common Area or to public right-of-way, or to a combination of Common Area and right-of-way. Such right shall

include, without limitation, a right to convert a Unit to right-of-way for the purpose of providing permanent access to property adjacent to the Community, whether or not such property is made subject to this Declaration. Upon conveyance of any Unit by Declarant to the Association as Common Area, the Unit shall cease to be a Unit and shall thereafter be Common Area. Upon recordation by Declarant of a plat or other instrument establishing a public right-of-way over a Unit that Declarant owns, the Unit shall cease to be a Unit and shall thereafter be treated in the same manner as any other property in the Community that has been dedicated to the public.

10.9. Central Telecommunication, Receiving, and Distribution System.

To the extent permitted by applicable law, Declarant reserves for itself, its Affiliates, successors, and assignees, the exclusive and perpetual right and easement to operate within Auburn Place, a central telecommunication (including cable television and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "Community System") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the Mecklenburg County, North Carolina area, and to charge or authorize such provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of any relevant government authority, if applicable.

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Benefited Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Further, if any such contract for a Community System is in effect prior to commencement of construction of the dwelling on any Unit, the Architectural Guidelines may require the dwelling to be pre-wired to connect to such Community System.

10.10. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in service provided by any Community System may occur from time to time, neither the Association, the Declarant, nor any Declarant Affiliate shall be held liable for any interruption in Community Systems services.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 7.5;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to Section 17.3;
 - (iv) impose reasonable membership requirements and charge reasonable initiation fees, admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - (v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 17.3; and
- (d) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. ~~An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.~~

11.2. Easements of Encroachment.

(a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Unit.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Auburn Place (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Auburn Place, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant or any Builder owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to

minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Auburn Place as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself, the Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Auburn Place, including Units, and a perpetual, nonexclusive easement of access throughout Auburn Place to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.7. Landscaping and Signage Easements.

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors over areas within the rights-of-way of streets within the Properties and those portions of Units designated "Landscaping and Signage Easements" on the recorded subdivision plats relating to Auburn Place for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any right-of way or Landscaping and Signage Easement. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such easement areas without the Association's prior written approval, other than those installed by Declarant or its designees.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. The Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area..

11.8. Easements for Storm Water Collection, Retention, and Irrigation Systems.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the property within the Community, including Units, to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility, (b) construct, maintain, and repair structures and equipment used for retaining water, and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

Article XII Limited Common Areas

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of particular Units. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped areas and other portions of the Common Area primarily serving a limited number of Units. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a

Service Area Expense allocated among the Owners in the Service Area to which the Limited Common Area is assigned.

12.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of (a) the Board, (b) persons entitled to cast a majority of the total Class "A" votes in the Association, and (c) persons entitled to cast a majority of the Class "A" votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassessment shall also require Declarant's written consent.

12.3. Use by Others.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units that serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

13.2. Maintenance, Damage and Destruction.

Except to the extent that a party structure is designated Limited Common Area or responsibility for maintenance or repair is otherwise assigned to or assumed by the Association pursuant to this Declaration, any applicable Supplemental Declaration, or written agreement:

(a) the Owners of the Units separated by a fence that constitutes a party structure shall each be responsible for maintaining that side of the fence facing such Owner's Unit; and

(b) to the extent that any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of both Units and

either Owner may perform the necessary maintenance or repair and, within 30 days after receipt of written evidence of the total cost incurred, the other Owner shall reimburse the Owner who has incurred such cost for one half of the reasonable cost he or she has incurred in performing such maintenance or repair.

Notwithstanding the above, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units that share such party structure, then the Owner of such Unit shall be responsible for the necessary maintenance or repairs.

In the event that any Owner installs, constructs, or erects a fence on the common boundary line such Owner's Unit and an adjacent Unit, and the owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a party fence for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

In the event that either Owner fails to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owner(s) and his (or their) Unit(s).

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The success of Auburn Place as a community in which people enjoy living and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Auburn Place without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has

first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

- (i) the interpretation, application, or enforcement of the Governing Documents; or
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within Auburn Place, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner, and
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards); and
- (iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

14.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

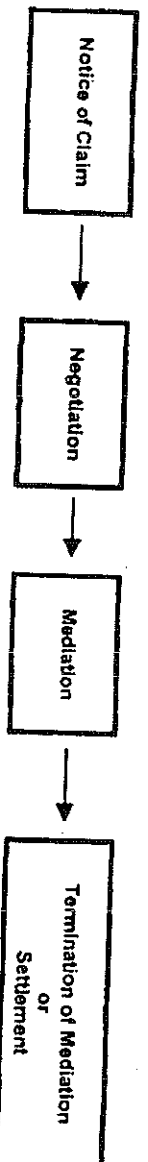
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Charlotte, North Carolina metropolitan area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-

complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

14.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period; or
- (b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge ad valorem taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XV Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Auburn Place. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

15.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of ~~Auburn Place or which affects any Unit on which there is an Eligible Mortgage held, insured, or~~ guaranteed by such Eligible Mortgage Holder; or
- (b) Any delinquency in the payment of assessments or charges owed for a Unit subject to the Eligible Mortgage of such Eligible Mortgage Holder, where such delinquency has

continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Auburn Place are dynamic and need the ability to monitor and adjust as circumstances, technology, needs and desires, and applicable laws change over time.

Article XVI Changes in Ownership of Units

16.1. Notice of Transfer.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

16.2. Administrative Transfer Fee.

The Association may charge an "Administrative Transfer Fee" on transfer of title to each Unit to cover the administrative expenses associated with updating the Association's records. Any such Administrative Transfer Fee shall be reasonably determined by the Board to cover its costs, including, but not limited to, any fees charged for updating records by a management company retained by the Association, except that any administrative fee charged on the initial sale of a Unit by a Builder shall not exceed \$25.00.

Article XVII Changes in Common Area

17.1. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members entitled to cast at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.4(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 17.3.

17.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 17.3.

17.3. Mortgaging, Conveyance or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Mecklenburg County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

- (a) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 80% of the total Class "A" votes in the Association and the Declarant during the Development and Sale Period; or
- (b) if Limited Common Area, upon written agreement of all Owners of Units to which the Limited Common Area is assigned.

The proceeds from the sale or financing of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or financing of Limited Common Area shall be disbursed as provided by the agreement authorizing such sale or security interest.

No sale or encumbrance of Common Area may deprive any Unit of rights of access or support.

Article XVIII Amendment of Declaration

18.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination, (b) enabling any reputable title insurance company to issue title insurance coverage on the Units, (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units, or (d) complying with the requirements of any state or federal law or any local, state or federal governmental agency. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Units or title to any Unit unless the Owner shall consent in writing.

18.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Persons entitled to cast at least 67% of the total Class "A" votes in the Association, including at least 67% of the Class "A" votes held by Members other than Declarant, and during the Development and Sale Period, the Declarant's consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Amendments shall be indexed in the Grantee index under the names "Auburn Place" and "Auburn Place Homeowners Association, Inc." and in the Grantor index under the name "Threat Vail Lane, LLC."

18.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

Article XIX Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Units. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

[continued on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT: THREATT VAIL LANE, LLC, a North Carolina limited liability company

BY: CROSLAND, INC., a North Carolina corporation, its managing member

By: William G. Doleure II
Name: William G. Doleure II
Its Vice President

Attest: Edith M. Gaines
Name: Edith M. Gaines
Its: Asst. Secretary

Edith M. Gaines
Sept 11

STATE OF NORTH CAROLINA)
COUNTY OF Mecklenburg)

I, Rhonda B. Bishop, a Notary Public of the Union County and State aforesaid, certify that Edith M. Gaines personally came before me this day and acknowledged that s/he is Asst. Secretary of CROSLAND, INC., a North Carolina corporation, managing member of THREATT VAIL LANE, LLC, a North Carolina limited liability company, and that by authority duly given and as a fact of the corporation, the foregoing instrument was signed in its name by its Vice President, and sealed with its corporate seal, on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 25th day of March, 2004.

Rhonda B. Bishop
Notary Public

[NOTARY SEAL]

My Commission Expires:
May 7, 2008

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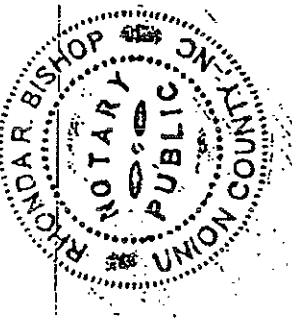


EXHIBIT "A"

Land Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Mecklenburg County, North Carolina, and being more particularly described on that certain Final Plat of Threat-Mattis - Phase I, Map 2 recorded on March 17, 2004, in Plat Book 41, Page 335, in the office of the Register of Deeds of Mecklenburg County, North Carolina, as such plat may be revised from time to time.

EXHIBIT "B"

Land Subject to Annexation

ALL THAT TRACT OR PARCEL OF LAND lying and being in Mecklenburg County, North Carolina, and being more particularly described as follows:

Beginning at a found 1 ½ inch pipe marking the Northeast corner of lot 147 of Josephs tract parcel 3, map 1 as recorded in Map Book 37 Page 655 of the Mecklenburg County Public Registry, said pipe also marking the Northwest corner of George W. Mattis and wife as recorded in Deed Book 8483 Page 43 of the Mecklenburg County Public Registry; thence with the common Northern line of the aforementioned Mattis and the Southern line of Park Village @ Raeburn 6-1B as recorded in Map Book 22 Page 18 of the Mecklenburg County Public Registry South 68-42-41 East 354.91 feet to a found pipe marking the Southeast corner of lot 17, Southwest corner of lot 18 and the Northwest corner of lot 20 of the aforementioned subdivision; thence with the common Eastern line of the aforementioned Mattis and the Western line of Parks Village Sec. 5 as recorded in Map Book 22 Page 71 of the Mecklenburg County Public Registry South 13-01-58 West 417.00 feet to a found #5 rebar marking a point on the Southern line of lot 24 of the aforementioned subdivision; thence with the common line of the aforementioned Mattis, the Northern line of David H. Robinson and wife Lynda B. as recorded in Deed Book 3528 Page 373 of the Mecklenburg County Public Registry and the Southern line of the aforementioned Parks Village Sec. 5 and the Southern line of Parks Village @ Raeburn 6-2 as recorded in Map Book 22 Page 71 South 76-24-20 East 699.72 feet to a found #4 rebar marking the Northeast corner of the aforementioned Robinson and the Northwest corner of Lynda H. Beaver as recorded in Deed Book 3828 Page 643 of the Mecklenburg County Public Registry; thence with the common Northern line of the aforementioned Beaver and the Southern line of the aforementioned Parks Village @ Raeburn 6-2 South 76-24-42 East 140.53 feet to a found #4 rebar marking the Southeast corner of the aforementioned subdivision and the Southwest corner of Reavencrest Phase 4 Map 5 as recorded in Map Book 36 Page 293 of the Mecklenburg County Public Registry; thence continuing on the common Northern line of the aforementioned Beaver and the Southern line of the aforementioned Reavencrest subdivision South 76-24-41 East 181.29 feet to a point marking the Northeast corner of the aforementioned Beaver and a point on the Northern line of R.L. Threatt and wife Ruth R. as recorded in Deed Book 3419 Page 71 of the Mecklenburg County Public Registry; thence with the common Northern line of the aforementioned Threatt and the Southern line of the aforementioned Reavencrest the following three (3) courses: 1) South 75-54-40 East 17.66 feet to a found #4 rebar; 2) South 77-46-11 East 425.80 feet to a point; 3) South 77-57-05 East 19.33 feet to a found #5 rebar marking the Northeast corner of the aforementioned Threatt and the Northwest corner of Southpoint @ Landen; thence with the common Eastern line of the aforementioned Threatt and the Western line of the aforementioned Southpoint @ Landen as recorded in Map Book 26 Page 532 and Map Book 27 Page 198 of the Mecklenburg County Public Registry South 12-01-02 West 1,208.16 feet to a found disturbed iron marking the Northeast corner of R.R. Residential, Inc. as recorded in Deed Book 12022 Page 445 of the Mecklenburg County Public Registry and the Southeast corner

of the aforementioned Threatt; thence with the common Southern line of the aforementioned Threatt and the Northern line of the aforementioned RR Residential, Inc. the following two (2) courses: 1) North 75-18-41 West 890.80 feet to a found #4 rebar; 2) North 75-17-29 West 195.05 feet to a found #4 rebar marking the Southwest corner of the aforementioned Threatt and the Southeast corner of R.L. Threatt and wife Ruth R. as recorded in Deed Book 3288 page 297 of the Mecklenburg County Public Registry; thence continuing with the common Northern line of the aforementioned RR Residential, Inc. and the Southern line of R.L. Threatt and wife Ruth R. as recorded in Deed Book 3288 Page 297 North 75-16-43 West 509.70 feet to a point marking the Southwest corner of the aforementioned Threatt and a point on the Eastern line of Portrait Home Construction Co., as recorded in Deed Book 12873 Page 3 of the Mecklenburg County Public Registry; thence with the common Western line of the aforementioned Threatt and the Eastern line of the aforementioned Portrait Homes Construction Co. North 03-51-49 East 724.62 feet to a found #4 rebar marking the Southwest corner of the aforementioned George W. Mattis and wife; thence with the common Eastern line of the aforementioned Portrait Homes Construction Co., the Western line of the aforementioned Mattis, and the Eastern line of the aforementioned Josephs tract, Parcel 3, Map 1 North 03-57-54 East 929.72 feet to the Point of Beginning being 48.71 Acres.

LESS AND EXCEPT the property described on Exhibit "A."

In addition to the above, as the owner or with the written consent of the owner, Declarant may also submit to the terms of the Declaration any real property situated within two (2) miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.

EXHIBIT "C"

Initial Restrictions and Rules

The following restrictions shall apply to all of Auburn Place until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration.

1. General. The properties submitted to this Declaration shall be used only for residential, recreational, and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for Declarant and the Association, and public facilities.

2. Restricted Activities. The following activities are prohibited within Auburn Place unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies; and

(b) Raising, breeding or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law; and

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment); and

- (d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation; and
- (e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or unsightly condition to exist outside of enclosed structures on the Unit; and
- (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; and
- (g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit; and
- (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; and
- (i) Use and discharge of firecrackers and other fireworks; and
- (j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within Auburn Place, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff; and
- (k) Accumulation of rubbish, trash, or garbage except between regular garbage pickups, and then only in approved containers which must either be stored in an enclosed garage or in the rear yard of the Unit, screened from view of adjacent property in a manner approved pursuant to Article IV except on the day garbage is collected; and
- (l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, its designees, and the Association shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Units; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent; and
- (m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that Declarant and Builders, with Declarant's written consent, shall be permitted to subdivide or replat Units which they own; and
- (n) ~~Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed; and~~

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns; and

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge; and

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV; and

(r) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis; and

(s) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for Auburn Place; (iii) the business activity does not involve door-to-door solicitation of residents of Auburn Place; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Auburn Place which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of Auburn Place and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Auburn Place as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection, provided that no Owner or group of related or affiliated Owners (as the Board may determine) shall collectively lease or hold for lease more than one Unit at any time. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by

Declarant with respect to its development and sale of Auburn Place or its use of any Units which it owns within Auburn Place including the operation of a timeshare or similar program; and

(i) Any construction, erection, placement, or modification of anything, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Auburn Place, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited in Auburn Place:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Auburn Place; and

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

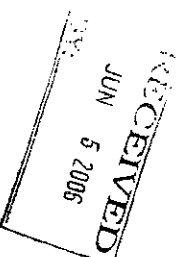
(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within Auburn Place, except that Declarant, its designees, and the Association shall have the right to draw water from such sources.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2006 MAY 23 11:35 AM
BK: 20488 PG: 821-926 FEE: \$23.00
INSTRUMENT # 2006100447



2006100447



Prepared by/Upon recording, please return to:
Crosland Land Development Division
c/o Rosilyn Sharpe
227 West Trade Street, Suite 800
Charlotte, North Carolina 28202

**SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR AUBURN PLACE
(Map 1 COS)**

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

Cross-Reference to: Book 16974
Page 350

INDEXING NOTE TO CLERK'S OFFICE:

Index in Grantor index under "Threatt Vail Lane, LLC"
Index in Grantee index under "Auburn Place" and
"Auburn Place Homeowners Association, Inc."

**THIS SECOND SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR AUBURN PLACE ("Supplemental Declaration")**
is made by Threatt Vail Lane, LLC, a North Carolina limited liability company ("Declarant").

BACKGROUND STATEMENT

WHEREAS, the Declarant executed and filed that Declaration of Covenants, Conditions and Restrictions for Auburn Place which was recorded April 7, 2004 in Book 16974, Page 350, *et seq.*, in the office of the Register of Deeds for Mecklenburg County, North Carolina ("Public Registry") as Instrument No. 2004072974 ("Declaration"); and

WHEREAS, pursuant to the terms of Article IX, Section 9.1 of the Declaration, Declarant may, with the consent of the owner thereof if other than Declarant, submit all or any portion of the property described on Exhibit "B" of the Declaration ("Expansion Property") to the terms of the Declaration; and, pursuant to Section 9.3, may impose additional covenants and easements on any portion of the property submitted to the Declaration; and

WHEREAS, the property described on Exhibit "A" of this Supplemental Declaration ("Additional Property") is a portion of the Expansion Property; and

WHEREAS, the Declarant, as the owner of the Additional Property, desires to submit the Additional Property to the terms of the Declaration;

NOW, THEREFORE, pursuant to the powers retained by the Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereto to the provisions of the Declaration and to this Supplemental Declaration, which shall apply to such property in addition to the provisions of the Declaration. Such property shall be sold, transferred,

used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon the Association in accordance with the terms of the Declaration.

ARTICLE I

Definitions

The definitions set forth in Article II of the Declaration are incorporated herein by reference.

ARTICLE II

Amendment

2.1. By Declarant.

Until conveyance of the first Unit within the Additional Property to a Person other than a Builder, Declarant may unilaterally amend this Supplemental Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Supplemental Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, so long as Declarant or any Declarant Affiliate owns any portion of the property described on Exhibits "A" or "B" of the Declaration for development or sale, it may unilaterally amend this Supplemental Declaration to submit additional property to the terms hereof, to reflect any revisions or amendments to the plats referenced on Exhibit "A" hereof, and, provided the amendment has no material adverse effect upon any right of any Owner without such Owner's consent in writing, for any other purpose.

Notwithstanding this reserved right, a revision or amendment to a plat shall not require an amendment to this Supplemental Declaration so long as no property is added or excluded from the plat by the revision or amendment thereto. Declarant reserves the right to record revised, amended, or additional plats that only affect internal boundaries between lots, combine lots, or subdivide lots shown on the original plat and, so long as they do not alter the overall property submitted to the Declaration by this Supplemental Declaration, such revised, amended or additional plats shall not necessitate an amendment to this Supplemental Declaration.

2.2. By Owners.

Except as otherwise specifically provided above, this Supplemental Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of 67% of the Units subject to this Supplemental Declaration and, during the Development and Sale Period, the consent of Declarant. In addition, the consent of the Board of Directors of the Association shall be required.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

2.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without Declarant's written consent or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplemental Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Registry, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplemental Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Second Supplemental Declaration this 23rd day of May, 2006.

DECLARANT: THREATT VAIL LANE, LLC, a North Carolina limited liability company

By: CROSLAND, INC., a North Carolina corporation, its managing member

By: William G. Daleure, II
Name: William G. Daleure, II
Its: Vice President

Attest: Rhonda Bishop
Name: Rhonda Bishop
Its: Division Assistant Secretary

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, Rosilyn M. Sharpe, a Notary Public for Mecklenburg County, North Carolina, certify that Rhonda Bishop personally came before me this day and acknowledged that s/he is Division Assistant Secretary of CROSLAND, INC., a North Carolina corporation, managing member of THREATT VAIL LANE, LLC, a North Carolina limited liability company, and that by authority duly given and as a fact of the corporation, the foregoing instrument was signed in its name by its Vice President, and sealed with its corporate seal, on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 23rd day of May, 2006.

Rosilyn M. Sharpe
Notary Public

My Commission Expires:
April 28, 2010

[NOTARY SEAL]

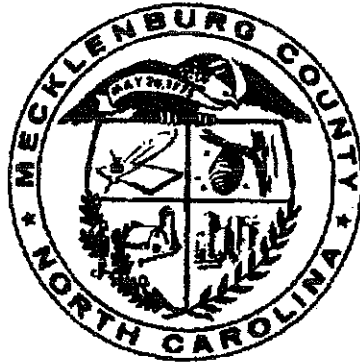


511216Supp Decl- Map 1 COS-4512206-jps

EXHIBIT "A"

Additional Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Mecklenburg County, North Carolina, and being more particularly described on that certain Revised Final Plat of Common Open Space, Threatt-Martis - Map I, recorded on April 13, 2004, in Plat Book 41, Page 467, in the office of the Register of Deeds of Mecklenburg County, North Carolina, as such plat may be revised from time to time.



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

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and/or cancellation.

Filed For Registration: 05/23/2006 11:35 AM

Book: RE 20468 Page: 921-925

Document No.: 2006100447

RESTR 5 PGS \$23.00

Recorder: SERENA ROSS

All leases shall be in writing. All leases shall have an initial term of at least six months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

FOR REGISTRATION JUDITH R. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2007 JUL 09 03:27 PM
BK: 22498 PG: 523-526 FEE: \$20.00
INSTRUMENT # 2007140679

2007140679

Prepared by and return to: Sellers, Hinshaw, Ayers, Dorich & Lyons, P.A. (ROD Box 91)
301 S. McDowell Street, Ste 410
Charlotte, NC 28204

MC

**CERTIFICATION OF AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
AUBURN PLACE**

This CERTIFICATION OF AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AUBURN PLACE is made pursuant to Article XVIII, Section 18.2 of the Declaration of Covenants, Conditions and Restrictions for Auburn Place for recordation in the Mecklenburg County Public Registry.

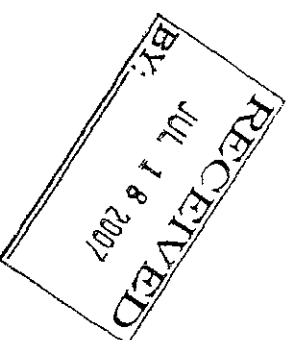
Statement of Purpose

The Declaration of Covenants, Conditions and Restrictions for Auburn Place recorded in Book 15974 at Page 350 of the Mecklenburg County Public Registry provides in Article XVIII, Section 18.2 for its amendment by the affirmative vote of persons entitled to cast at least sixty-seven percent (67%) of the Class A votes in the Association and the Declarant's consent. In accordance with the requirements of the Declaration, affirmative votes were obtained from persons entitled to cast at least sixty-seven percent (67%) of the Class A votes in the Association and consent was obtained from the Declarant. Accordingly, the amendment of the Declaration as set forth herein is hereby certified by officers of the Association for recordation in the Mecklenburg County Public Registry.

NOW, THEREFORE, with the affirmative vote of persons entitled to cast at least sixty-seven percent (67%) of the Class A votes in the Association and with the Declarant's consent, the Declaration of Covenants, Conditions and Restrictions for Auburn Place is amended as follows:

Article XVI is amended to create a Section 16.3 to provide as follows:


16.3. Leasing of Units. "Leases" or "Rental Agreements" for the purposes of this Paragraph, are defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service or gratuity. All leases or rental agreements shall be in writing and shall have a minimum term of twelve months. No more than three percent (3%) of the Units within Auburn Place shall be leased or rented at any one




time. No lease or rental agreement may be extended, by agreement or holdover, unless expressly approved as required herein. No lease or rental agreement shall be assigned nor shall any Unit be sublet without the prior written permission of the Board of Directors of the Association. All leases and rental agreements of any type, including renewals, must be approved in writing prior to the commencement of the lease or rental term by the Association, acting by and through the Board, who shall have the power of enforcing the leased Unit limitation set forth herein. The Board, in its discretion, may permit the leasing of a Unit in excess of the three percent (3%) limit if the Owner of the Unit has suffered a hardship, including, but not limited to illness, loss of employment, etc. No proposed lease or rental agreement of any type, including but not limited to renewals, assignments and subleases, shall be considered unless it is accompanied by a nonrefundable \$125.00 review fee made payable to the Association. The Association shall keep a copy of all leases or rental agreements submitted for its review. The Board may adopt policies and procedures for the identification and designation of Units which may be leased or rented within Auburn Place, the process to be followed by owners submitting leases or rental agreements for review and for the maintenance of a waiting list for owners seeking to lease or rent their Units, and those policies and procedures may be amended by the Board from time to time as the Board, in its discretion, deems appropriate. Each permitted lease shall be subject to the Declaration of Covenants, Conditions and Restrictions for Auburn Place, the Association's By-Laws and the rules and regulations adopted hereunder ("Governing Documents"). Every lease and rental agreement shall provide that the lease term may be terminated in the event of a violation by any occupant of any provisions of the Governing Documents. In addition to other remedies, the Association may require an Owner to promptly evict all occupants in the event of any such violation.

The undersigned are officers of the Auburn Place Homeowners Association, Inc, and certify the adoption of this amendment, and do hereby certify that approval of this amendment was obtained as required by the Declaration and in accordance with North Carolina law and that this amendment to the Declaration has been duly adopted to be effective upon recordation in the Mecklenburg County Public Registry.

AUBURN PLACE HOMEOWNERS ASSOCIATION,
INC.

By: 
205 Active - President

Printed Name: Harold B. Starr

By: 
Secretary

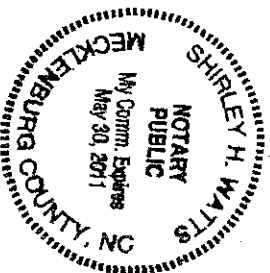
Printed Name: Sandra L. Dickerson

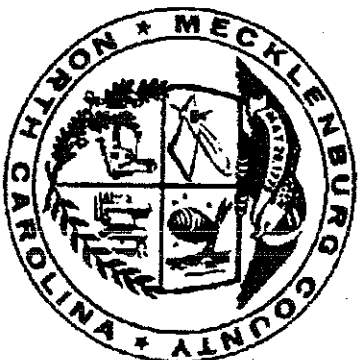
State of North Carolina
County of Mecklenburg

Howard B. Strick I, a notary public for the County and State aforesaid, do hereby certify that
and Sandra L. Dickerson being first duly sworn, appeared before
me this day and certified that he/she is the President and he/she is the Secretary of AUBURN
PLACE HOMEOWNERS ASSOCIATION, INC., and, upon authority duly given and as the act
of the Association, certified the due adoption and execution of the foregoing instrument for
recordation in the Mecklenburg County Public Registry.

Shirley H. Watts
Notary Public

My Commission Expires: May 30, 2011





JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

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Book: RE 22498 Page: 523-526

Document No.: 2007140679

RESTR 4 PGS \$20.00

Recorder: SERENA ROSS



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