

Prepared by or return to
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DECLARATION OF COVENANTS AND RESTRICTIONS
OF THE DOWNING CREEK COMMUNITY ASSOCIATION, INC.
AND DOWNING CREEK ASSOCIATES,
A NORTH CAROLINA PARTNERSHIP

THIS DECLARATION, made this 22nd day of September,
1987, by DOWNING CREEK COMMUNITY ASSOCIATION, INC., a North
Carolina nonprofit corporation, called "Association," and DOWNING
CREEK ASSOCIATES, a North Carolina partnership, hereinafter
called "Company."

W I T N E S S E T H:

WHEREAS, the Company is the owner of the real property
described in Article II of this Declaration and desires to create
thereon a planned development community with a balanced
representation of residential, commercial, industrial and
recreational uses to be known as "Downing Creek;"

WHEREAS, the Company desires to provide for the preservation
of value and for the maintenance of common facilities and
services and for a vehicle for the administration and enforcement
of covenants and restrictions;

WHEREAS, the Company has caused to be incorporated under the
laws of the State of North Carolina a nonprofit corporation,
Downing Creek Community Association, Inc., for the purpose of
exercising the functions aforesaid which are hereinafter more
fully set forth;

NOW, THEREFORE, the Company declares that the real property
described in Article II, and such additions thereto as may
hereinafter be made pursuant to Article II hereof, is and shall
be held, transferred, sold, conveyed, given, donated, leased,
occupied and used subject to the covenants, restrictions,
conditions, easements, charges, assessments ("Assessments"),
affirmative obligations and liens (all hereinafter sometimes
referred to as "the Covenants") hereinafter set forth.

ARTICLE I
DEFINITIONS

The following words and terms, when used in this Declaration
or any supplemental declaration (unless the context shall clearly
indicate otherwise), shall have the following meanings:

(a) "Association" shall mean and refer to Downing Creek
Community Association, Inc., a North Carolina nonprofit
corporation, its successors and assigns.

(b) "Downing Creek" shall mean and refer to the lands in
Durham, North Carolina, which are shown as a part of Downing
Creek on the Company's Master Plan as revised from time to time.

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(c) "Company" shall mean Downing Creek Associates, a North Carolina partnership, its successors and assigns.

(d) "Developer" shall mean Downing Creek Associates, a North Carolina partnership, its successors and assigns.

(e) "Affiliate" shall mean any corporation more than fifty percent (50%) of the voting stock of which is owned or controlled by the Company or the Developer, and any partnership or joint venture in which the Company or the Developer has more than a fifty percent (50%) equity interest or an interest in fifty percent (50%) or more of the cash flow from such partnership or joint venture.

(f) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(g) "Residential Lot" shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a Single Family Detached Dwelling, Single Family "D" Duplex Unit, or Patio Home (or Zero lot line) as shown upon any recorded final subdivision map or any part of the Properties. No parcel shall, however, be classified as a Residential Lot until the first day of the quarter of the year following after all of the following have occurred;

- (1) Recording of a Plat in the Office of the Register of Deeds of Durham County, North Carolina, showing such Residential Lot;
- (2) The Lot has been placed on an "Inventory List" (as defined in Section 3(c) of Article (v) of lots for sale submitted to the Association by the Company, the Company's Affiliates, the Developer or the Developer's Affiliates) in those cases where the Lot is owned by the Company, the Company's Affiliates, the Developer or the Developer's Affiliates.
- (3) The Lot is sufficiently developed to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as a Residential Lot in those cases where the Lot is owned by any third party other than the Company, the Company's Affiliates, the Developer or the Developer's Affiliates.

(h) "Multiple-Family Tract" shall mean any unimproved parcel of land located within the Properties intended for development of Attached Residential Units, including Townhouses, Condominiums and Apartments as defined and controlled by the applicable zoning for Downing Creek. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multiple-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or

designating such property for Multiple-Family use is recorded in the Office of the Register of Deeds of Durham County, North Carolina, provided, however, that any property within said parcel of land which also qualifies as an "Exempt Property" as defined in paragraph (n) of this Article I shall not be deemed part of said Multiple-Family Tract for the purposes of calculating Assessments or votes. A Multiple-Family Tract, or portions of said Multiple-Family Tract, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as improved properties as defined in Section 3(d) of Article V.

(i) "Public or Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial, governmental or business enterprises to serve Residents of Downing Creek and/or the public, including, but not limited to: business and professional office; facilities for the retail sale of goods and services; banks and other financial institutions; social clubs; restaurants; hotels, motels, inns; theaters; lounges; indoor and outdoor recreational facilities; hospitals and medical clinics; laboratories and other research and development facilities; commercial warehouses; transportation terminals or stations; automobile parking facilities, gasoline stations, industrial plants; and residential dwelling units within multi-use public or commercial buildings or facilities; provided, however, that a "Public or Commercial Site" shall not include property upon which improvements are to be built which also qualifies as a Multiple-Family Tract, nor shall it include any property which also qualifies as "Exempt Property" as defined in paragraph (n) of this Article I. For the purposes of this Declaration, a parcel of land shall not be deemed a "Public or Commercial Site" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a Public or Commercial Site is recorded in the Office of the Register of Deeds of Durham County, North Carolina. A Public or Commercial Site, or portions of said Site, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as improved properties as defined in Section 3(e) of Article V.

(j) "Development of Unit Parcel" shall mean and refer to any parcel or tract of land within the Properties conveyed by the Company to any third party under Covenants and Restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots, Multiple-Family Tracts, or Public or Commercial Sites. For the purposes of this Declaration, a parcel of land shall not be deemed a "Development Unit Parcel" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a development Unit Parcel is recorded in the Office of the Register of Deeds of Durham County, North Carolina; provided, however, that a "Development Unit Parcel" shall not include any property which also qualifies as "Exempt Property" as defined in paragraph (n) of this Article I. A Development Unit Parcel, or portions

thereof, shall remain classified as such until further subdivided and classifiable as a Residential Lot or Lots, Multiple-Family Tract, or Public or Commercial Site pursuant to Section 3(h) of Article V.

(k) "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration of any supplemental declaration under the provisions of Article II hereof, which has not been subdivided into and classified as Residential Lots, Multiple-Family Tracts, Public or Commercial Sites, or Development Unit Parcels, through metes and bounds subdivision plats recorded in the Office of the Register of Deeds of Durham County, North Carolina; provided, however, that "Unsubdivided Land" shall not include any property which also qualifies as "Exempt Property" in paragraph (n) of this Article I. Unsubdivided Land, or portions thereof, shall remain classified as such until subdivided and classifiable as a Residential Lot or Lots, Multiple-Family Tract, Public or Commercial Site, or Development Unit Parcel pursuant to Section 3 of Article V.

(l) "Family Dwelling Unit" shall mean and refer to any improved property or any property formerly classified a Residential Lot for which a building permit has been issued by the appropriate governmental authorities, which property is located within the Properties and intended for use as a Single Family Dwelling, including without limitation, any Single-Family Detached Dwelling, Single Family "D" Duplex Unit, Patio Home (or Zero lot line), Condominium Unit, Townhouse Unit, Cooperative Apartment Unit or Apartment Unit located within the Properties.

(m) "Public or Commercial Unit" shall mean and include any improved parcel of land within the Properties which is intended and designed to accommodate public, commercial, governmental or business enterprises to serve Residents and/or the public, including, but not limited to, all those enterprises enumerated in subparagraph (i); provided, however, that a "Public or Commercial Unit" shall not include any property which also qualifies as "Exempt Property" as defined in paragraph (n) of this Article I. A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as improved properties.

(n) "Exempt Property" shall mean and refer to the following classifications of property within the Properties which, for the purposes of this Declaration, shall not be deemed "Multiple-Family Tracts," "Public or Commercial Sites," "Development Unit Parcels," "Unsubdivided Land," or "Public or Commercial Units" and shall be expressly excepted from the definitions thereof:

- (1) All land designated on the Master Plan for intended use, or by actual use if applicable, for (i) indoor and outdoor recreational and community facilities owned and

operated by the Company, the Company's Affiliates, the Developer, the Developer's Affiliates, the Associations and any other homeowners association (hereinafter referred to as "Homeowners Association") organized by the Company or by others with the consent of the Company within the Properties if such Homeowners Association operates such facilities for the private use of its members or the Members of the Association, including, but not limited to, tennis courts, platform tennis courts, handball courts, squash courts, basketball courts, swimming pools, gymnasiums, golf courses, ice skating rinks, and any showers, locker rooms or other club facilities associated with such uses, putting greens, playgrounds, ball fields, spectator viewing pavilions, gazebos, picnic shelters, picnic tables, parks, horseback riding stables, riding arenas, riding trails, walking trails, bike trails, boardwalks, decks, bicycle rental facilities, operating farms and/or animal pastures, wildlife conservancies and feeding stations, nature interpretive areas, amphitheaters, community meeting facilities, and all rest room facilities, parking lots, service buildings and concession-type food services associated with all such uses; and (ii) places of worship; libraries; fire stations and rescue squads; post offices; day care centers, nursery schools, and other schools and instructional centers; nonprofit or charitable community, civil or cultural clubs and institutions; and other similar community facilities which the Board of Directors, in its sole and uncontrolled discretion, may designate as Exempt Properties;

- (2) All lands and any improvements thereon designated in any way as Common Properties or Restricted Common Properties;
- (3) All lands and any improvements thereon committed to the Association through express written notification by the Company to the Association of intent to convey to the Association, including, without limitation, Intended Common Properties and Intended Restricted Common Properties;
- (4) All lands designated on the Master Plan or on recorded plats as Open Space or Private Open Space (hereinafter referred to, respectively, as "Open Space Areas" and "Private Open Space Areas") as defined in the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Downing Creek, and any improvements thereon which are defined in subparagraph (1) of this paragraph (n);
- (5) Property which is used for the maintenance, operation and service of facilities with Common Properties, Restricted Common Properties, Intended Common Properties, and Intended Restricted Common Properties

and facilities within Open Space Areas which are defined in subparagraph (l) of this paragraph (n);

(6) Property which is used for the maintenance, operation and service of utilities within the Properties;

(o) "Owner" shall mean and refer to the Owner as shown by the Real Estate Records in the Office of the Register of Deeds of Durham County, North Carolina, whether it be one (1) or more persons, firms, associations, corporations or other legal entities of fee simple title to any Residential Lot, Family Dwelling Unit, Multiple-Family Tract, Public or Commercial Site, Public or Commercial Unit, Development Unit Parcel or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgages or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or Tenant of an Owner. In the event that there is recorded in the Office of the Register of Deeds of Durham County, North Carolina, a long-term contract of sale covering any Lot or Parcel of land within the Properties, the Owner of such Lot or Parcel of land shall be the Purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the Purchaser is required to make payments for the Property or a period extending beyond nine (9) months from the date of the contract and where the Purchaser does not receive title to the Property until all such payments are made, although the Purchaser is given the use of said Property.

(p) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Family Dwelling Unit or Public or Commercial Unit in Downing Creek.

(q) "Resident" shall mean and refer to each Owner and Tenant of a Family Dwelling Unit who resides in Downing Creek.

(r) "Member" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(s) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Downing Creek. Since the concept of the future development of Downing Creek is subject to continuing revision and change by the Company, present and future references to the "Master Plan" shall be references to the latest revision thereof.

(t) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Plan of Downing Creek prepared by the Company as the same may be revised from time to time by the Company, or the use to which any particular parcel of land is restricted by Covenants expressly set forth or incorporated by reference in deeds by which the Company has conveyed the property.

(u) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired or leased by the Association if said property is designated a "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association. Common Properties shall not include those tracts of land falling within the definition of "Restricted Common Properties" set forth below.

(v) "Restricted Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association and designated in such deed or lease as "Restricted Common Properties." The term "Restricted Common Properties" shall also include any personal property acquired or leased by the Association if said property is designated a "Restricted Common Property." All Restricted Common Properties are to be devoted to, and intended for the common use and enjoyment of, Type "A" Members of the Association, guests accompanying such Members and the Company, so long as the Company is a Type "A" Member of the Association, with all use of Restricted Common Properties to be subject to the fee schedules and operating rules adopted by the Association. Any lands or personal property which are leased by the Association for use as Restricted Common Properties shall lose their character as Restricted Common Properties upon the expiration of such lease.

(w) "Intended Common Property" shall mean and refer to those tracts of land and any improvements thereon committed to the Association through express written notification by the Company to the Association of intent to convey said property to the Association as a Common Property.

(x) "Intended Restricted Common Property" shall mean and refer to those tracts of land and any improvements thereon committed to the Association through express written notification by the Company to the Association of intent to convey said property to the Association as a Restricted Common Property.

(y) "Neighborhood Area" shall mean and refer to areas in Downing Creek designated as neighborhoods on the Master Plan and subdivision plats recorded in the Office of the Register of Deeds of Durham County, North Carolina.

(z) "Referendum" shall mean and refer to the power of all, or some specific portion of, the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein. In the event fifty-one percent (51%) of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members provided, however, that if a higher percentage required to "pass"

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shall be specifically expressed herein, that higher percentage shall control in that instance.

ARTICLE II
EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to these Covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Durham County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property." The Company intends to develop the Existing Property in accordance with a Master Plan prepared in its Planning Department and placed on display in its Reception and Sales Office and other areas. The Company reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Company, its successors and assigns to adhere to the Master Plan in the development of the land shown thereon. Subject to its right to modify the Master Plan as stated herein, the Company shall convey to the Association certain properties designated on the Master Plan as properties which may be transferred to the Association as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Properties or Restricted Common Properties, as the case may be. The Company shall not be required to follow any predetermined sequence or order of improvements and development, and it may bring within the plan of these Covenants additional lands and develop the same before completing the development of the Existing Property. Other than as stated in this paragraph, the Company shall have full power to add to, subtract from or make changes in the Master Plan regardless of the fact that such actions may later affect the relative maximum potential voting strength of the various types of membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Declaration in the following manner;

(a) Additions. During the period of development, which shall by definition extend from date to January 1, 1992, the Company, its successors and assigns shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration additional property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Residential Lots and Family Dwelling

Units authorized in the Properties and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The additions authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The Supplementary Declaration of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to a simple majority of the vote of those present at a duly called meeting, the owner of any property who desires to add such property to the plan and operation of this Declaration and to subject it to the jurisdiction of the Association, shall record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Residential Lots and Family Dwelling Units authorized in the Properties, and therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient for the inclusion to Downing Creek of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

(c) Mergers. Upon merger or consolidation of the Association with another association, as provided for in the By-Laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing property, together with the Covenants and Restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, within the Existing Property, including, without limitation, the maximum limits on Assessments and dues of

the Association, or any other matter substantially affecting the interests of Members of the Association.

(d) Additional lands which become subject to this Declaration under the provisions of this Section II may in the future be referred to as a part of Downing Creek. Also, the name "Downing Creek" may be used by the Company to refer to other nearby properties not subject to this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership The Company shall be a Member of the Association, and a creditor who acquires title to the Properties or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, shall be a Member of the Association. Every Owner and Tenant, unless otherwise specified, shall be a Member of the Association. Every Owner shall be required to submit the name(s) of his Tenant(s) and the duration of their tenancy to the Secretary of the Association. The Association may issue to each Member a membership card which shall expire upon termination of a Tenant's Lease or upon sale by an Owner of his property in Downing Creek. Tenants of Public or Commercial Units and Owners or Tenants who are exempt from the payment of Assessments shall not be Members of the Association unless otherwise specified herein.

Section 2. Voting Rights. The Association shall have four (4) types of regular voting membership and one (1) type of special voting membership which provides the Company, its successors and assigns with the power to elect a portion of the Board of Directors:

TYPE "A": Type "A" Members shall be all Owners including the Company, its successors and assigns of Residential Lots and Family Dwelling Units. A Type "A" Member shall be entitled to two (2) votes for each Family Dwelling Unit which he owns.

TYPE "B": Type "B" Members shall be all those Owners including the Company, its successors and assigns of platted Public or Commercial Sites and Multiple-Family Tracts. A Type "B" Member shall be entitled to one (1) vote for each One Hundred Dollars (\$100.00) in Annual Assessments paid to the Association. In computing the number of votes to which a Type "B" Member shall be entitled, the amount of the Assessment paid shall be rounded to the nearest One Hundred Dollars (\$100.00).

TYPE "C": Type "C" Members shall be all those Owners including the Company, its successors and assigns of Public or Commercial Units. A Type "C" Member shall be entitled to one (1) vote for each One Hundred Dollars (\$100.00) in Annual Assessments paid to the Association. In computing the number of votes to which a Type "C" Member shall be entitled, the amount of the Assessment paid shall be rounded to the nearest One Hundred Dollars (\$100.00).

TYPE "D": Type "D" Members shall include all those Owners including the Company, its successors and assigns of Unsubdivided Lands and Development Unit Parcels held and intended for future development by the Company or a third party. A Type "D" Member shall be entitled to one (1) vote for each One Hundred Dollars (\$100.00) of Annual Assessments paid to the Association. In computing the number of votes to which a Type "D" member shall be entitled, the amount of the Assessment paid shall be rounded to the nearest One Hundred Dollars (\$100.00).

TYPE "E": The Type "E" Member shall be the Company its successors and assigns. The Type "E" Member shall be entitled to elect a portion of the Board of Directors as set out in Section 4 of this Article III.

Payment of Special Assessments shall not entitle type "A," "B," "C" and "D" Members to additional votes.

When any property entitling the Owner to membership as a Type "A," "B," "C" and "D" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effect:

- (1) If only one (1) votes, in person or by proxy, his act shall bind all;
- (2) If more than one (1) votes, in person or by proxy, the act of the majority so voting shall bind all;
- (3) If more than one (1) votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes;
- (4) If the instrument or order filed with the Secretary of the Association shows that any such Tenancy is held in unequal interest, a majority or even split under subparagraphs (2) and (3) immediately above shall be a majority or even split in interest in the property to which the vote(s) is attributable;
- (5) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

The voting rights of any Owner may be assigned by said Owner to his lessee; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. The Type "A," "B," "C" and "D"

Members are sometimes hereinafter collectively referred to as the "Members."

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7) or nine (9) Members. The number and term of such Directors is to be determined in accordance with the provisions of the Articles of Incorporation of the Association. Except as may be otherwise provided in the Articles of Incorporation, there shall be two (2) classes of Directors: Class I Directors shall be elected by the Type "A," "B," "C" and "D" Members, and Class II Directors shall be elected by the Type "E" Members.

Section 4. Election of The Board of Directors. (a) Each Member of Type "A," "B," "C" and "D" Membership classes shall be entitled to as many votes as equals the total number of votes he is entitled to based on his Ownership of or Tenancy in one (1) or more of the various classifications of property as computed by the formula set out hereinabove in Section 2 hereof. Each Member may cast the total number of votes to which he is entitled for each vacancy to be filled by a Class I Director. Cumulative voting shall not be allowed. Members, except the Type "E" Membership, are divided into classes for the purpose of computing voting rights and shall not vote as a class.

The Type "A," "B," "C" and "D" Members shall elect the Class I Director(s), and the Type "E" Member shall elect the Class II Director(s) according to the following formula:

- (1) The number of Class I Directors shall be determined by (a) dividing (i) the number of Residential Lots and Family Dwelling Units owned by Type "A" Members by (ii) the cumulative maximum number of Residential Lots and Family Dwelling Units authorized by the Zoning Ordinances of the County of Durham as of July 28, 1986 and (b) then multiplying the resulting quotient by the total number of Directors, and (c) rounding the result to the nearest whole number, e.g., 1.49 = 1 and 1.50 = 2.
- (2) The number of Class II Directors shall be determined by subtracting the number of Class I Directors from the total number of Directors. The Class II Directors shall be elected by the Type "E" Member.
- (3) For the purposes of this formula, the number of Residential Lots and Family Dwelling Units owned by Type "A" Members and the cumulative maximum number of Residential Lots and Family Dwelling Units authorized in the Properties shall be determined by the Board of directors as of the date on which notice of the meeting of the Members at which the Board of directors is to be elected is mailed.

Section 5. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve

or reject certain actions proposed to be taken by the Association by Referendum. In the event fifty-one percent (51%) or more of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions herefor. At any time that the Type "A," "B," "C" and "D" members have the ability to elect a majority of the Board of Directors, the Members may require a Referendum on any action of the Board of Directors by presenting to the Secretary of the Board, within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action, a petition signed by not less than twenty-five (25%) percent of the Members.

Section 6. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

(a) The first time a meeting of the Members of the Association is called to vote on (i) an increase in the Maximum Regular Annual Assessment greater than that provided for by subparagraph (c) of Section 3 of Article V hereof, (ii) a Special Assessment as provided for by Section 4 of Article V hereof, (iii) the gift or sale of any parcel of land and improvements thereon designated as a Common Property or Restricted Common Property as provided for by subparagraph (f) of Section 4 of Article IV hereof, (iv) an Amendment to this Declaration as provided for by Section 2 of Article VIII hereof, or (v) the termination of this Declaration as provided by Section 1 of Article VIII hereof, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership required for such action shall constitute a quorum.

(b) The first time a meeting of the Members of the Association is called to vote on any action proposed to be taken by the Association, other than that described in subparagraph (a) above, the presence at the meeting of Members or proxies entitled to cast thirty percent (30%) of the total vote of the Membership required for such action shall constitute a quorum.

If the required quorum is not present at any meeting described in subparagraphs (a) or (b) above, with the exception of any meeting called to vote on the termination of this Declaration described in subparagraph (a)(v) above, another meeting or meetings may be called subject to the giving of proper notice, and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

