

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR TUSCANY RIDGE**

NORTH CAROLINA

ORANGE COUNTY

PREPARED BY & RETURN AFTER RECORDING TO:

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4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607

THIS DECLARATION is made the ____ day of _____, 2003 by Red Zin Development, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of that certain property in the County of Orange, State of North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein ("Property"); and

WHEREAS, Declarant will convey the said Property subject to certain protective covenants, conditions, restrictions, easements, reservations, and liens as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Property together with such additions as may hereafter be made thereto shall be held, sold and conveyed

subject to the following protective covenants, conditions, restrictions, easements, reservations, and liens which are for the purpose of protecting the value and desirability of and which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

Section 1. Additional Properties: "Additional Properties" shall mean and refer to any real property annexed to the Property or otherwise acquired by or brought within the jurisdiction of the Association.

Section 2. Architectural Committee: "Architectural Committee" shall mean and refer to that certain committee appointed by the Declarant and/or the Board for the purpose of reviewing, approving and enforcing architectural and landscape guidelines and use restrictions described in or adopted pursuant to this Declaration.

Section 3. Articles: "Articles" shall mean and refer to the articles of incorporation of the Association.

Section 4. Association: "Association" shall mean and refer to Tuscan Ridge Homeowners Association, Inc., its successors and assigns.

Section 5. Board: "Board" shall mean and refer to those persons elected or appointed to act collectively as the directors of the Association.

Section 6. Bylaws: "Bylaws" shall mean and refer to the bylaws of the Association as they now or hereafter exist.

Section 7. Common Area: "Common Area" shall mean and refer to all real property owned by and easements granted to the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds or easements to the Association. Common Area shall also mean all water and sewer lines located outside of public streets and public easements not located on Lots but which are within the Property; and, all stormwater ponds, retention and detention devices.

Section 8. Declarant: "Declarant" shall mean and refer to Red Zin Development, LLC, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure.

Section 9. Dwelling Unit: "Dwelling Unit" shall mean and refer to a residence containing sleeping facilities for one or more persons and a kitchen, which residence is

located on a Lot.

Section 10. Lot: "Lot" shall mean and refer to any plot of land described by a metes and bounds description shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 11. Lot in Use: "Lot in Use" shall mean and refer to any Lot which has been conveyed by the Declarant to a subsequent purchaser, but in the event the Lot is a vacant lot, the Lot does not become a Lot in Use until such time as the Lot is initially inhabited or twelve months from the date of conveyance, whichever first occurs. In no event shall it mean a Lot owned by the Declarant on which no Dwelling Unit has been constructed.

Section 12. Member: "Member" shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association.

A. "Class A Members" shall be all those Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A Member upon termination of Class B membership.

B. "Class B Member" shall be the Declarant as defined herein.

Section 13. Owner: "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. Property: "Property" shall mean and refer to that certain real property described in Exhibit A attached hereto and incorporated herein and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II **PROPERTY RIGHTS**

Section 1. Owners' Easement of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area, including specifically an easement for access, ingress and egress from and to public streets and walkways, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. Dedication and Transfer of Common Area: The Association shall have the right to dedicate or transfer all or any parts of the Common Area to any public agency, authority, utility, or non-profit corporation for recreational purposes, subject to such conditions as may be agreed to by the Members; provided that said dedication or transfer shall be approved by the appropriate municipal authority and shall also be approved as provided in Article XII, Section

6. No such dedication or transfer shall be effective unless instrument(s) signed by the greater of: (i) two-thirds (2/3) of each Class of Members and (ii) the vote of eighty percent (80%) of the persons entitled to cast votes in the Association as described in North Carolina General Statute § 47F-3-112, agreeing to such dedication or transfer has been recorded in the Orange County Registry. Any such dedication or transfer shall be made subject to every Owner's easement for access, ingress and egress to public streets and walkways.

B. Intentionally Omitted.

C. Suspension of Rights: The Board and/or the Association shall have the power to suspend the voting rights and right to use of the Common Area and recreational facilities, if any, of a Member, his family, tenants, contract purchasers, and guests during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Fines may be imposed as permitted by North Carolina General Statute § 47F-3-107 and North Carolina General Statute § 47F-3-107.1.

Section 2. Delegation of Use: Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, contract purchasers who reside on a Lot and guests, subject to the provisions of this Article II.

Section 3: Title to the Common Area: The Declarant hereby covenants for itself, its heirs, successors and assigns, that it will convey fee simple title and/or non-exclusive easements, as applicable, in the Common Area to the Association, subject to utility, drainage, greenway, signage and other easements of record, prior to the conveyance of the first Lot. Title to Common Areas annexed pursuant to Article IV shall be conveyed to the Association on the same terms as provided in this Section 4 and subject to the terms of this Declaration.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership: Every person or entity who is a record Owner of a fee or undivided fee in any Lot which is subject by covenants of record to assessments; or which is specifically exempted from assessment either by the terms of this Declaration or by the terms of appropriate governmental laws, ordinances, or regulations; or will become subject to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to, or will become subject to, assessment by the Association. Ownership of said Lot shall be the sole qualification for membership. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot. The Board or the Association may make reasonable rules relating to the proof

of ownership of a Lot in this subdivision. Each Member agrees to keep the Association informed of his address at all times and any notice sent or delivered to said address shall be deemed sufficient.

Section 2. Voting Rights: The Association shall have the following two (2) classes of voting Members.

Class A: Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. Declarant may, however, be a Class A Member upon the termination of Class B membership. When more than one Owner holds an interest in any Lot, all such Owners shall be Members. The vote of such Lots shall be exercised as the Owners, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon one of the following events, whichever occurs first:

A. When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph B. below, Additional Properties are annexed to the Property without the assent of Class A Members for the development of such Additional Properties by the Declarant, all as provided in Article IV, Section 2, herein; or

B. On January 1, 2008; or

C. Upon the surrender of all Class B memberships by the holder thereof; which shall be permitted at any time and for any reason.

ARTICLE IV **ANNEXATION OF ADDITIONAL PROPERTIES:** **DECLARANT'S RESERVED RIGHTS**

Section 1. Annexation by Members: Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Property only if sixty-seven percent (67%) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days in advance of the meeting.

For the purpose of such meeting, the presence thereof of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes, in the aggregate, of the Members, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the

notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the sixty-seven percent (67%) of each class required for approval of the annexation, and it appears that the required sixty-seven percent (67%) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which he is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite sixty-seven percent (67%) of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant: The Declarant may annex Additional Properties to the Property in the following manner:

A. If, on or before January 1, 2008, the Declarant should develop, from time to time, an additional tract or additional tracts of land, consisting of any property contiguous to the Property, such additional lands may be annexed to the Property without the assent of the Members.

B. The Declarant may annex to the Property additional land as described in subsection A. above by recording with the Orange County Registry a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. The additional land shall be deemed annexed to the Property and no other action or consent shall be necessary.

C. Conveyances of Common Areas to be located in annexed lands will be made prior to the conveyance of the first Lot of the newly annexed Additional Properties.

Section 3. Reserved Declarant Rights: As long as Class B membership exists, the Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Article IV, Section 2 of this Declaration; (ii) to create Dwelling Units; (iii) to add Common Areas; (iv) to modify or change Dwelling Unit types; (v) to reallocate Dwelling Units or Lots within the Property; and (vi) to withdraw real estate from the Property.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of

any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges; and
- B. Special assessments for extraordinary maintenance and capital improvements.

Such assessments are to be established and collected as hereinafter provided. All assessments relating to the Common Area shall be shared equally by the Owners of each Lot in Use. Special assessments for capital improvements shall, except as provided herein, be shared equally by the Owners of each Lot without regard as to whether or not said Lot is a Lot in Use. The annual and special assessments, together with interest thereon and the costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon such until paid in full. Each such assessment, together with the interest and costs of collection, including reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot or Lot in Use at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them; notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the following purposes:

- A. for the promotion of the recreation, health, safety and welfare of the residents of the Property;
- B. for the promotion of the beautification of the Property;
- C. for the payment of ad valorem taxes and public assessments levied on the Common Area owned by the Association;
- D. for the general use, enjoyment, and maintenance of the Common Area, including but not limited to (i) the cost of signage, lighting, landscaping, mowing of lawns, planting of trees, shrubs, flowers and other plants, and watering by irrigation systems; (ii) the cost of repairs and replacements of community buildings and active recreational facilities; and (iii) the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Area;
- E. for the acquisition, improvement and maintenance of the services and facilities devoted to the aforesaid purposes;
- F. for the procurement and maintenance of liability and hazard insurance in accordance with the Bylaws and the regulations of the Federal National Mortgage Association;

G. for the employment of a management company and professionals, such as accountants and attorneys, to enforce this Declaration and the rules of the Association and to represent the Association when necessary; and

H. for the maintenance of an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.

Section 3. Maximum Annual Assessments:

A. Initial Maximum Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the maximum annual assessment shall be \$1,200.00 per year per Lot in Use.

B. Increases in Assessment: Thereafter, annual assessments shall be established by the Board pursuant to Section 6 of this Article, but each annual increase shall not be more than twenty percent (20%) except by approval by two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

C. Declarant Expenses: As long as Declarant or its successors or assigns, has a majority of the total votes of the Class A and Class B votes, as calculated pursuant to Article III, Declarant, its successors or assigns, will advance all expenses for the maintenance and operation of the Common Area to the extent that annual assessments paid by the Owners are inadequate for this purpose. Such advances shall be to the Association as a loan and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Class A and Class B votes are no longer possessed by Declarant, its successors or assigns, it shall have no further obligation for the maintenance and operation of the Common Area pursuant to the terms of this Section. Declarant, its successors and assigns, shall be responsible for the payment of assessments pursuant to other sections of this Article.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy one or more special assessments applicable to that year only for the purpose of defraying in whole or in part the cost of any reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area including the necessary fixtures and personal property related thereto. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or Section 4: Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the

required quorum at the subsequent meeting shall be one-half (1 /2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 90 days following the preceding meeting.

Section 6. Uniform Rate of Assessment: Both annual and special assessments (with the exception of the special assessment authorized by Section 12 of this Article) must be fixed at a uniform rate for all Lots and/or Lots in Use (as appropriate) and may be collected on a monthly, quarterly or annual basis in advance as the Board may determine. Provided, however, that the Board shall also have the authority, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from Owner's breach of any of the provisions of this Declaration.

Section 7. Date of Commencement of Annual Assessments: The annual assessments provided for herein shall commence as to all Lots in Use on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot in Use at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period. The due date shall be established by the Board. The Association shall, upon demand at any time, furnish a certificate in writing setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid as to third parties acting in reliance on said statement.

Section 8. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association shall be entitled to file a Claim of Lien for the amounts owed. The Board may, in its sole discretion, waive the imposition of interest as to any delinquent assessment. The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien against the Lot. Interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each such Owner, by the acceptance of a deed to a Lot hereby expressly grants to the Association, its agents, successors and assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the same manner as prescribed by the laws of North Carolina for the foreclosure of a deed of trust, and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid at foreclosure and to acquire and hold, lease, mortgage and convey the same. No

Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Dwelling Unit or Lot.

In the event such an action at law results in a judgment being entered against the Owner and in favor of the Association, then the Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the state of North Carolina.

Section 9. Subordination of the Lien to Deeds of Trust: The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust representing a first lien on such Lot in favor of any bank, savings and loan association, insurance company or similar financial institution. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any mortgage or deed of trust or any proceeding or deed in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. Such unpaid assessments extinguished by the foreclosure sale or transfer in lieu thereof shall be deemed to be common assessments collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Exempt Property: The following Property, subject to this Declaration, shall be exempt from the assessment created herein:

- A. All portions of the Property dedicated to and accepted by a local public authority.
- B. The Common Area.
- C. All portions of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to Dwelling Unit use shall be exempt from said assessments except as otherwise provided herein.

Section 11. Insurance Assessments: The Board or its duly authorized agent shall obtain a broad-form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a common expense. All such insurance coverage shall be written in the name of the Association as Trustee for each of the Owners in equal proportions. The minimum amount of liability insurance shall be Five Hundred Thousand Dollars (\$500,000.00).

Section 12. Special Assessment for Repairs: In the event any portion of any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or family members, such Owner hereby authorizes the Association to repair such damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and materials, shall become a special assessment upon the Lot of such Owner.

Section 13. Annual Budget: By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration and any and all amendments hereto shall be met.

Section 14. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE VI **EASEMENTS**

Section 1. Utility Easements: All of the Property, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Easement for the Benefit of Governmental Authorities: An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Area for the setting, removing, and reading of water meters, if applicable, maintaining and replacing water, sewage, and drainage facilities, for police protection, fire fighting, and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 3. Recorded Easements: There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement or setback requirement reserved herein or on the recorded map, the wider easement or setback shall prevail. No improvements shall be located within any easement or setback areas shown on such map or maps, except as expressly permitted in Article VI, Section 4 of this document or otherwise permitted by the Board and Orange

County zoning ordinances. The Association reserves for itself the right of unrestricted access to any drainage, pedestrian, or improvement related easements to conduct maintenance and repair as recommended by the Architectural Committee or Board.

Section 4. Greenway Easement and Buffer: There is hereby reserved for the benefit of the Association a greenway easement and buffer thirty (30) feet in width running along the access right of way on the front Lot line(s) of each Lot as shown upon the recorded subdivision map of the Property as 30' Type "A" Buffer. A Type "A" Buffer is defined by Orange County zoning ordinances and is described in summary as; "A buffer composed of deciduous and/or evergreen vegetation, forming semi-opaque intermittent visual obstructions from the ground to a height of at least thirty (30) feet upon maturity."

No trees, bushes, shrubs, grass or other vegetation may be planted or removed within this greenway easement and buffer area except by written permission of the Architectural Committee and subject to Orange County zoning ordinances and Type "A" Buffer requirements. The Association reserves for itself the right of unrestricted access to the greenway easement and buffer area to a) install a paved or loose surface pedestrian path, as shown on the Open Space and Pathways plan approved by the Orange County Board of Commissioners, up to six (6) feet wide, and b) to maintain the Type "A" Buffer by planting or removing trees, bushes, shrubs, grass or other vegetation subject to Orange County zoning ordinances and Type "A" Buffer requirements and provided recommended by the Architectural Committee or Board, and c) for selective and minimal clearing necessary for the creation of reserved septic fields and for the remediation of failed septic fields.

ARTICLE VII **ARCHITECTURAL CONTROL**

Section 1. Common Plan of Development: The Property is hereby made subject to the protective covenants, conditions, easements and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in this subdivision; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive Dwelling Units in appropriate locations on Lots; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and in general to provide adequately for a high quality of improvements on said Property and thereby to enhance the values of investments made by the Owners of Lots therein.

Section 2. Appointment of Architectural Committee: Until such time as the Class B membership expires, Declarant shall annually appoint the members of the Architectural Committee, which will be composed of at least three (3) individuals, the exact number of members of the Architectural Committee being designated by Declarant from time to time. Each Architectural Committee member shall be generally familiar

with residential and community development design matters and knowledgeable about the design standards within the Property. In the event of the death, resignation or removal by Declarant of any member of the Architectural Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Committee, and thereafter, the Board, shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time with or without cause, and without prior notice, by Declarant, for so long as Declarant has the right to appoint the members thereof, and thereafter by the Board. Subsequent to the expiration of Class B membership (and earlier if Declarant specifically assigns this right to the Board), the Board shall designate the number of and appoint the members of the Architectural Committee on an annual basis. At any time, Declarant may elect not to designate the number of and/or appoint the members of the Architectural Committee and may assign this right to the Board.

Section 3. Authority: No landscaping shall be undertaken and no Dwelling Unit, wall, fence or other improvement shall be commenced, erected, placed, maintained or altered on any Lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made until all plans and specifications, a plot plan, and site/landscape plan have been submitted to and approved in writing by a majority of the members of the Architectural Committee, as to:

- A. Quality of workmanship and materials, adequacy of the site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets;
- B. Conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other Lots in the subdivision, provided, however, approval by the Architectural Committee shall not be required to paint a building the same or similar color as the original paint;
- C. Location with respect to topography in finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement; and
- D. The other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within architectural review guidelines and bulletins promulgated by the Architectural Committee, or matters in which the Architectural Committee has been vested with the authority to render a final interpretation and decision.

The Architectural Committee is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Lot Owners or the general value of Lots in the subdivision. In considering the harmony of external design between existing structures in the proposed Dwelling Unit or other improvements being erected, placed or altered, the Architectural Committee shall consider only the general appearance of the proposed building as that can be determined

from front, rear and side elevations on submitted plans.

Section 4. Procedure for Approval: Final plans and specifications (including a preliminary plot plan showing the location of the contemplated improvements on the Lot and a final site/landscape plan) for all improvements proposed to be constructed on a Lot shall be submitted to the Architectural Committee for approval or disapproval. Such submissions shall be subject to the architectural review guidelines, bulletins and process as specified by the Architectural Committee. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the Architectural Committee-approved set of plans and specifications must again be submitted to the Architectural Committee for its review and approval. The Architectural Committee's approval or disapproval, as required herein, shall be in writing. In the event the Declarant or the Architectural Committee fail to approve or disapprove such design and location within thirty (30) days after the date of receipt of the completed plans and specifications and other required documentation, written approval shall not be required and this Article will be deemed to have been fully complied with. In the case of a dispute about whether the Declarant or Architectural Committee responded within such time period, the person submitting plans shall have the burden of establishing that the Declarant or Architectural Committee received the plans. The receipt of the plans may be established by a signed certified mail receipt.

Section 5. Standards: The Architectural Committee may from time to time promulgate architectural review guidelines and bulletins which shall be fair, reasonable and uniformly applied with regard to the Lots and shall carry forward the spirit and intention of this Declaration. Although the Architectural Committee shall not have unbridled discretion with respect to taste, design and all standards specified herein, the Architectural Committee shall prevent unusual, radical, curious, odd, bizarre, peculiar or irregular Dwelling Units and other improvements from being constructed in the subdivision. However, the Architectural Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the equities between matters of taste and design (on the one hand) and the use of private property (on the other hand). The architectural review guidelines and bulletins promulgated by the Architectural Committee shall supplement this Declaration and are incorporated herein by reference. Current copies of the architectural review guidelines and bulletins shall be available to interested persons at the principal office of the Association.

Section 6. Enforcement: The Declarant, the Architectural Committee, the Board and the Association shall have the specific, non-exclusive right (but not the obligation) to enforce the provisions contained in this Article and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

Section 7. Limitation of Liability: Neither the Declarant nor the Architectural Committee, and the members thereof, shall have any liability for decisions made by the Declarant or the Architectural Committee so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the plot plan or the site/landscape plan and other documents submitted to the Declarant or the

Architectural Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Declarant and Architectural Committee shall have no obligation to check for such plans' compliance with the general provisions of this Declaration, municipal codes, state statutes and common law, whether the same relate to Lot lines, building lines, easements or any other issue.

Section 8. Right of Inspection: The Declarant or the Architectural Committee shall have the right, at its election, to enter upon any of the Lots during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

Section 9. Compensation: Reasonable fees for the Declarant and/or the members of the Architectural Committee for services performed pursuant to this Article shall be set by the Board. The party submitting the plans and specifications for approval or the Association shall reimburse the Declarant or members of the Architectural Committee for their reasonable out-of-pocket expenses incurred in the performance of their duties.

Section 10. Responsibility for Maintenance of the Grounds of Each Lot (Excluding Improvements Thereon): It shall be the responsibility of each Owner to maintain his or its Lot grounds in a clean cut, well kept and neat manner.

Section 11. Exterior Improvement Maintenance Responsibility: Each Owner, at his sole cost and expense, shall provide exterior upkeep and maintenance of the improvements on the Lot. Such improvements shall always be maintained in a neat and attractive manner and in keeping with the quality or standard of maintenance of other Owners. Such maintenance and upkeep shall include, and without limitation, exterior building surface care such as painting, staining, cleaning, repair, and replacement of roofs, shingles or siding, repair, and replacement of gutters, downspouts, moldings, doors, screens, and glass surfaces, and shall further include repair and maintenance of fences, screens, walks, driveways, or exterior lighting and lighting fixtures.

In the event an Owner fails to keep and maintain the improvements on his Lot in a neat and attractive manner, then the Association may maintain, repair, replace, or generally keep up, including painting, staining, and other repairs to the improvements on the Lot if such has been approved in advance by a vote of seventy-five percent (75%) of the voting interest of each class of members present and voting in person or by proxy at a meeting of Members duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item.

In the event the Association must do any maintenance, repair, replacement, or upkeep on any Lot, each Owner hereby gives to the Association, and the same is hereby reserved unto the Association, its agents, servants, or independent contractors, the right and easement for unobstructed access in, over, and on each Lot at all reasonable times to perform such repair or replacement by the Association and to charge the Owner the costs thereof as allowed by this Declaration.

Section 12. Common Area Maintenance Responsibility: Maintenance of the

Common Area, subdivision, security system, street lights, and private streets and signage located thereon or adjacent thereto, if any, shall be the duty of the Association. The Association shall have the right and easement of ingress, egress and regress over the Property as reasonably necessary in connection with its right (but not the obligation) to plant and maintain flowers, shrubs and other plants thereon.

ARTICLE VIII **USE RESTRICTIONS**

Section 1. Rules and Regulations: The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property: Except as provided herein, no Lot shall be used except for single-family residential purposes and for purposes incidental or accessory thereto. Any home occupation use of any Lot is subject to the Orange County zoning regulations and can occur only following the issuance by Orange County of a home occupation permit.

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

Section 4. Animals: No animals, birds, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. All pets shall be kept on a leash when not on the Lot of the owner of the pet; no pets shall be allowed to roam the subdivision.

Section 5. Insurance: Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area.

Section 6. Offensive Behavior: No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to comply with such requirements.

Section 7. Structural Integrity: Nothing shall be done in, to, or upon any of the Common Area which will impair the structural integrity of any structure or other improvement or portion of the Common Area or which would impair or alter the exterior of any structure, improvement or portion thereof, except in the manner provided in this Declaration.

Section 8. Business: No business, trade, occupation, or profession of any kind shall be conducted, maintained, or permitted on any Lot unless it meets the following requirements and Orange County zoning ordinances. The Orange County zoning ordinances shall prevail in cases of conflict with this section.

A. Any home occupation use of any portion of the Property is subject to the Orange County zoning regulations and can only occur following the issuance by Orange County of a home occupation permit.

B. A limit of two full-time equivalent employees who are not a member of the family residing on the Lot. “Full time equivalent employee” refers to one or more employees who work a total of no more than 40 hours on-site per week.

C. The use of the Lot for the home occupation shall be clearly incidental and subordinate to the use of the Lot for residential purposes, and not more than 35% nor more than 1000 square feet of the floor area of the dwelling unit or more than 1000 square feet in an accessory building shall be used in the conduct of the home occupation, provided that the floor area used for the home occupation is the area dedicated to or primarily used for the home occupation, and does not include areas incidentally used for the home occupation. Any accessory structure for home occupation must have the appearance of a residential accessory structure.

D. No external evidence of the conduct of the home occupation, including commercial signs, shall be visible from the street or from other Lots.

E. Traffic and Parking

(1) The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in the residential neighborhood. Traffic generated by visitors, customers, or deliveries shall not exceed more than two business trips per hour, more than eight trips per day, or more than two deliveries of products or materials per week.

(2) In addition, normally there shall be no more than 3 vehicles parked at a given time on or off-street for non-residential purposes including but not limited to parking by non-

resident employees, customers, delivery services, etc., but excluding drop-offs and pick-ups. Home occupations for arts education or similar educational purposes are exempt from any parking restrictions.

- (3) There shall be no regular pick-up and delivery by vehicles other than those of a size normally used for household deliveries. There shall be no vehicles with a load capacity in excess of one ton in connection with the home occupation. Vehicles with permitted load capacities generally include large pick-up trucks, and delivery trucks and vans such as those used by UPS, but would not include vehicles such as tractor trailers or dump trucks.

F. No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the Lot.

G. The on-premises sale and delivery of goods which are not the products of the home occupation are prohibited, except that the sale of goods which are incidental to the service of the home occupation is permitted.

Section 9. Signs: No Owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Area, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority. Declarant or its respective agents, however, may place "For Sale" signs and other marketing signs as Declarant deems appropriate as aids to such development and marketing provided that such signs do not violate any applicable laws, including the Orange County zoning ordinances.

Notwithstanding the foregoing, Owners may place standard "For Sale" signs on their Lot, but no other signs shall be allowed by the Owner on their Lot or anywhere else in the subdivision.

Section 10. Alterations: No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction or with the express written consent of the Association.

Section 11. Common Area Use: The Common Area shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking: No boats, trailers, campers, motorhomes, trucks, or tractors shall be parked in the front yard of any Lot, on the Common Area, or on any right-of-way of any roads or streets within the Property or adjoining the Property by any

Owner, its family members, tenants, or contract purchasers. Said items may, however, be parked inside an enclosed garage located on a Lot, or in another area on a Lot provided that the items are totally screened from view from the street and adjoining lots. Delivery and maintenance vehicles are permitted. The Board, or at its request, the Architectural Committee, may grant temporary exceptions.

The Owner(s) of any occupied Lot shall provide at least two (2) parking spaces on the Lot (in addition to the garage) for off-street parking. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks, passenger vans or passenger sport utility vehicles may be regularly parked in driveways. No vehicle will be permitted to park regularly on any roadway or road shoulder within the subdivision.

Section 13. Trailers, etc.: No trailer, tent, mobile home, modular home, or other structure of a temporary character shall be placed upon any Lot at any time; provided, however, that this prohibition shall not apply to shelters or storage units used by the contractor during the construction of a Dwelling Unit, garage, or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 14. Subdividing: No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, its successors, and assigns, the right without Board approval to replat any two (2) or more Lots shown on the plat of the subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access to any area of the Property and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area, said steps to include, but not to be limited to, the creation of or the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots.

Section 15. Delivery Receptacle: No mail box, paper box, or other receptacle of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or located on any Lot, except if permitted by the Association and the Architectural Committee.

Section 16. Antennae: Exterior radio and television antennae, aerials, and disks and dishes larger than 40" in diameter for reception of commercial broadcasts shall not be permitted on any Lot. Disks and dishes 40" or less in diameter are permitted provided that they are not visible from the street or from an adjoining Lot, and provided that the Architectural Committee has approved the location. No other aerials, disks and dishes (for example, without limitation, amateur short wave) shall be permitted on any Lot without permission of the Architectural Committee as to design, appearance, and location or pursuant to regulations issued for that purpose.

Section 17. Firearms; Hunting Prohibited: There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion and no hunting of any type shall be carried on or conducted on the Property.

Section 18. Drying Areas: Clotheslines or drying yards shall not be located upon any Lot.

Section 19. Unsightly Growth: No underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly trash or other objects shall be allowed to be placed or suffered to remain thereon, including vacant Lots.

Section 20. Independent Covenants: Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants and restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 21. Additional Restrictions: Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

ARTICLE IX **BUILDING RESTRICTIONS**

Section 1. Square Footage: Any Dwelling Unit erected on a Lot shall contain a minimum enclosed Dwelling Unit area of 2,700 square feet for a Dwelling Unit exceeding one (1) main floor or 2,200 square feet on the main floor for a single-story Dwelling Unit. In addition thereto, and unless a variance is granted therefore as provided herein, all Dwelling Units shall have an enclosed two car garage. The term "enclosed Dwelling Unit area" as used in this Article IX shall mean the total enclosed area within a Dwelling Unit subject to heating and cooling; provided, that the term specifically does not include garages, terraces, open porches, decks, stoops, and like areas regardless of heating or cooling. Square footage requirements for Dwelling Units may be limited by the appropriate septic system as determined by the Orange County Health Department, Division of Environmental Health.

Section 2. Setback Lines: Any and all Dwelling Units and other permitted Improvements, as hereinafter defined, erected on a Lot shall conform to and comply with the minimum building setback requirements shown on a recorded subdivision plat of the Property and as follows:

A. Front Line and Rear Line. No Dwelling Unit, building, garage or other improvements including decks and porches, but excluding eaves, steps, stoops, uncovered decks, chimneys, open porches, septic systems and well systems (the "Improvements") shall be located on any Lot nearer to a front Lot

line than 50 feet or nearer to a rear Lot line than 25 feet.

B. Corner Lot. A corner Lot shall be considered to have two (2) front lines and Improvements must not be located closer than 50 feet from both front lines.

C. Side Line. No Improvement shall be located nearer than 25 feet to a side Lot line with the exception of Lot 12, as shown on the recorded subdivision map of the property, on which Lot and only for which Lot, the minimum building setback shall be 20 feet from the side Lot line.

D. Waiver. The Architectural Committee shall have the authority and discretion without need of formal Board approval to waive the strict setback requirements stated herein for any infraction provided: (i) the infraction does not violate the minimum setback requirements promulgated by Orange County or other governmental authority having jurisdiction over the Property and (ii) the infraction constitutes a *de Minimis* violation of the prescribed setback requirements herein. *De Minimis* shall mean ten percent (10%) or less of the stated requirement.

Section 3. Height and Accessory Building: No structure, except as hereinafter provided, shall be erected, altered, placed, or permitted to remain on any Lot other than a detached single family Dwelling Unit. The Architectural Committee may approve a detached garage and small accessory building (such as guest cottages), provided such accessory building is not constructed prior to the construction of the primary Dwelling Unit. No structure shall be erected greater than three (3) stories in height unless approved in writing as a variance by the Architectural Committee and allowed by Orange County zoning ordinances.

Section 4. Multi-Family Use Prohibited: No multi-family residence or apartment house shall be erected, placed on, or allowed to occupy, any Lot, and no Dwelling Unit once approved and constructed shall be altered or converted into a multi-family residence or apartment house.

Section 5. Remedies: If the finished Dwelling Unit, garage, accessory building, or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at Owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws a notice of liens for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be preapproved by the Architectural Committee in accordance with the procedure herein specified for architectural control.

Section 6. Trash Receptacles: Each Owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground receptacles or similar facilities in accordance with standards established by the

Association.

Section 7. Trees and Shrubs: The Declarant encourages the planting of flowering shrubs and trees; however, no trees, bushes, shrubs, grasses or other vegetation whatever, may be removed, planted, or installed from or on any Lot without prior written approval of the Architectural Committee, based upon a site plan, landscaping plan, or planting plan submitted to the Architectural Committee. Owners may, however, perform routine maintenance of their landscaping without permission of the Architectural Committee. Routine maintenance shall include lawn and plant maintenance, supplementing existing landscaping, planting flowers, removing small trees (with a diameter of less than 6 inches), removing dead trees and branches, removing invasive or noxious plants such as poison ivy and kudzu. Should the cost of the landscaping work exceed 10 times the then current annual assessment, the Lot owner must obtain the approval of the Architectural Committee. The Architectural Committee, in its sole discretion, may withhold its consent to remove trees, bushes, shrubs, grasses, or any other vegetation whatsoever. Any Owner who violates this provision shall be fined Five Hundred Dollars (\$500.00) payable to the Association. Such fine will be added to the cost of Owner's monthly assessment and collected as an assessment. No trees may be cut in primary protection areas as defined in the Orange County Subdivision Regulations, Section IV-B-8-c-1 except as expressly permitted by Article VI, Section 4 of this document,

Section 8. Clearing, Grading, and Drainage: No clearing of trees or earthwork (grading) shall commence until the plans and specifications, plot plan and site/landscape plan has been approved by the Architectural Committee. The Clearing Limit Line ("CLL") shall be shown on the plans and specifications, plot plan and site/landscape plan and located in the field before clearing may begin. The CLL location shall take into account existing trees and their root zones. No clearing or removal of any vegetation may take place beyond the CLL, except for dead or diseased plants, or tall spindly trees which may threaten site improvements. "Hi-Viz" plastic tree protection fencing shall be installed along the entire perimeter of clearing. No grading, movement of equipment, or storing of materials shall be permitted beyond this fence and the fence shall remain until final grading, planting and seeding has been completed. Clearing is subject to the Orange County Ordinance Section IV-B-8-c.

Section 9. Driveways: Within the greenway easement and buffer described in Article VI, Section 5, the driveway surface shall not extend further than twenty (20) feet in width laterally from the side Lot line(s). As indicated on the recorded subdivision map of the Property, driveways shall be located at alternating Lot division boundary lines, beginning with Lot #1's southern boundary line. All portions of any driveway included in the first fortyfive (45) feet from the edge of the paved surface of the roads shall be paved, in accordance with the construction standards set forth by the Architectural Committee, prior to occupancy of any Dwelling Unit constructed on that Lot. Driveway design guidelines shall be established by the Architectural Committee.

Section 10. Fences and Walls: Fences and walls, including, but not limited to, retaining walls, shall not be erected upon any Lot without the prior written consent of the Architectural Committee, which consent may be conditioned or withheld in the sole

discretion of the Architectural Committee.

Section 11. Construction Limitations: During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving, and curbs. During construction, builders must keep the Dwelling Units, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc. must be removed from each Lot by builder as often as necessary to keep the Dwelling Unit and Lot attractive. Such debris shall not be dumped in any area of the Property.

ARTICLE X **INSURANCE**

Section 1. Insurance to be Maintained by the Association: The following insurance coverage shall be maintained in full force and effect by the Association:

- A. Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association.
- B. All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- C. Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements located on the Common Area.

Section 2. Premiums: Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries: All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Insurance to be Maintained by the Owners: Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his improvements except that the amount shall not be required to exceed the replacement cost of the improvements. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

ARTICLE XI **RIGHTS OF INSTITUTIONAL LENDERS**

Section 1. Rights Reserved to Institutional Lenders: "Institutional Lender" or

“Institutional Lenders”, as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal National Mortgage Association, and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

A. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected, and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

C. To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

D. To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

E. To be given notice by the Association of any substantial damage to any part of the Common Area.

F. To be given notice by the Association if any portion of the Common Area, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor, or insurer desires the benefits of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XII
GENERAL PROVISIONS

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

Section 2. Severability: Invalidity of any one or more of these covenants, conditions, easements, restrictions and other provisions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. General Amendment: The covenants, conditions, easements and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Declarant, Association, Board, Architectural Committee and Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time, said covenants shall automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided herein, the covenants, conditions, easements and restrictions of this Declaration may be amended during the first twenty-five (25) year period or thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that the Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without the action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Orange County Registry.

If any amendment to these covenants, conditions, easements and restrictions is executed, each such amendment shall be delivered to the Board. Thereupon, the Board shall, within thirty (30) days, do the following:

- A. Reasonably assure itself that the amendment has been duly approved by the Owners of the required number of Lots as herein provided (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined).
- B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association, and shall be in substantially the form shown in Exhibit B attached hereto and incorporated herein.
- C. Immediately and within the thirty (30) day period, aforesaid, cause the amendment to be recorded in the Orange County Registry.

All amendments shall be effective from the date of recordation in the Orange

County Registry. When any instrument purporting to amend the covenants, conditions, easements and restrictions has been certified by the Board and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Owners of Lots in Tuscany Ridge subdivision.

Section 4. Amendments Permitted without Membership Approval: The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

A. Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.

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

C. The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

D. The Declarant, for so long as it has control of the Board, may amend this Declaration to include any platting change of the Property as permitted herein.

Section 5. Disputes: In the event of any dispute arising concerning a party wall or other provisions of this Declaration, such dispute may be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of said committee.

Section 6. VA/HUD Approval: As long as there is a Class B membership, the

following actions will require prior approval of the Veterans Administration (referred to herein as VA) and/or the Department of Housing and Urban Development (referred to herein as HUD): (i) annexation of Additional Properties, (ii) dedication or withdrawal of land from dedication as Common Area, or (iii) an Amendment of this Declaration of Covenants, Conditions, Easements and Restrictions.

Section 7. North Carolina Planned Community Act: Unless otherwise provided as allowed by law, the provisions of the North Carolina Planned Community Act (North Carolina General Statute Chapter 47F) shall apply to the Property and the Association.

Section 8. Gender and Grammar: The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make provisions herein apply to either corporations or individuals, man or wife, shall in all cases be assumed as though in each case fully expressed.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its company name by its duly authorized officers as of the day and year first above written.

RED ZIN DEVELOPMENT, LLC, a North
Carolina
limited liability company

By: _____
William F. Bird, Manager

Central Carolina Bank and Southland Associates, Inc., Trustee, join in the execution of this Declaration for the limited purpose of subordinating the lien of that certain Deed of Trust from Red Zin Development, LLC to Southland Associates, Inc., Trustee for Central Carolina Bank, dated August 9, 2002, and recorded on August 12, 2002 in Book 2673, Page 68, Orange County Registry, to the covenants, conditions, easements and restrictions contained herien.

IN WITNESS WHEREOF, Central Carolina Bank and Southland Associates, Inc., Trustee, have duly executed this instrument under seal this the _____ day of _____, 2003.

CENTRAL CAROLINA BANK, a
Division of National Bank of Commerce

By:

Name:

Office: _____ Vice President

ATTEST:

By: _____

Name: _____

Office: _____ Secretary

(CORPORATE SEAL)

TRUSTEE

SOUTHLAND ASSOCIATES, INC.,

By:

Name:

Office: _____ Vice President

ATTEST:

By: _____

Name: _____

Office: _____ Secretary

(CORPORATE SEAL)

NORTH CAROLINA

_____ COUNTY

I, _____, the undersigned Notary Public of _____ County, North Carolina, do hereby certify that William F. Bird, Manager of Red Zin Development, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal this ____ day of _____, 2003.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of
_____ County, North Carolina, do hereby certify that
_____ personally appeared before me this day and
acknowledged that he/she is Vice President of Central Carolina Bank, a division of
National Bank of Commerce, and that he/she, as Vice President being authorized to do
so, executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial seal this ____ day of _____,
2003.

Notary Public

(NOTARY SEAL)

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of _____
County, North Carolina, do hereby certify that
_____ personally appeared before me this day and
acknowledged that he/she is Vice President of Southland Associates, Inc., Trustee, and
that he, as Vice President being authorized to do so, executed the foregoing on behalf of
the corporation.

WITNESS my hand and notarial seal this ____ day of _____,
2003.

Notary Public

(NOTARY SEAL)

My Commission Expires: _____

EXHIBIT A

BEING all of Lots 1 through 22 inclusive, together with property shown and delineated as "Private Open Space", "Tuscany Drive", "Craftsman Street" and "Lot A", all as shown on plat and survey entitled "Tuscany Ridge Subdivision" prepared by Ballentine Associates, P.A. dated January 23, 2003, and recorded in Plat Book _____, at Page _____, Orange County Registry, to which reference is hereby made for a more particular description.

EXHIBIT B

CERTIFICATION OF VALIDITY OF AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF TUSCANY RIDGE.

By authority of its Board of Directors, Tuscany Ridge Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Tuscany Ridge and is, therefore, a valid amendment to the existing Declaration of Covenants, Conditions, Easements and Restrictions of Tuscany Ridge.

IN WITNESS WHEREOF, the Tuscany Ridge Homeowners Association, Inc. has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

TUSCANY RIDGE HOMEOWNERS
ASSOCIATION, INC.

BY: _____
President

ATTEST:

Secretary

(Corporate Seal)