

2/2



20091120000277270 DECL
Bk:RB4860 Pg:5
11/20/2009 11:12:06 AM 1/21

FILED Joyce H. Pearson
Register of Deeds, Orange Co, NC
Recording Fee: \$99.00
NC Real Estate TX: \$.00

Prepared by and return to: Bagwell Holt Smith Jones & Crowson, P. A., 111 Cloister Court, Ste. 200, Chapel Hill, NC 27514

NORTH CAROLINA
ORANGE COUNTY

**DECLARATION OF CREATION OF PHOENIX PLACE,
A PLANNED COMMUNITY**

This Declaration of Creation of Phoenix Place, a Planned Community (the "Declaration"), is made on this 19th day of November, 2009, by HABITAT FOR HUMANITY, ORANGE COUNTY, N. C., INC., a North Carolina nonprofit corporation (hereinafter referred to as the "Declarant"). The Declarant states and declares as follows:

A. The Declarant is the owner of that certain real property located in Orange County, North Carolina, and described in **Exhibit A** attached hereto and incorporated herein (the "Property");

B. The Declarant intends to create from the Property and such additional land as may be subjected to this Declaration pursuant to Article IX below a planned community to be known as Phoenix Place (the "Community"); and

C. The Delcarant desires to impose certain restrictive and protective covenants upon the Property to protect and to promote the beneficial ownership, use and enjoyment of all residential lots and common areas located within the Community.

NOW, THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (the "Planned Community Act"), the Declarant hereby executes this Declaration to create Phoenix Place, a North Carolina planned community, and declares that henceforth all portions of the Property shall be held and owned subject to the following terms, provision, covenants, conditions and restrictions, which shall run with the Property and which shall be binding upon all owners of any portion of the Property and their personal representatives, guests, mortgagees, heirs, executors, administrators, successors and assigns.

IRREGULAR FORM *Avery Pauline L. Mason*



Article I. Application of the North Carolina Planned Community Act.

The terms and provisions of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community.

Article II. Definitions.

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

“Annexation Declaration” shall mean an instrument recorded at the Orange County Registry that subjects additional land to this Declaration.

“Architectural Guidelines” shall mean the architectural, design and construction guidelines and review procedures adopted pursuant to Article VI below, as they may be amended.

“Articles of Incorporation” shall mean the Articles of Incorporations for Phoenix Place Homeowners Association, a North Carolina nonprofit corporation.

“Association” shall mean Phoenix Place Homeowners Association, a North Carolina nonprofit corporation, its successors and assigns.

“Base Assessment” shall mean the assessment levied on all Lots subject to assessment under Article V below to fund common expenses, as determined in accordance with Article V below.

“Board of Directors” or “Board” shall mean the executive board of the Association, as defined by the Planned Community Act and as created by the Bylaws.

“Bylaws” shall mean the bylaws of the Association as they now or hereafter exist and as they may be amended from time to time.

“Common Area” shall mean all property, and any improvements thereon, wherever located, owned or leased by the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members.

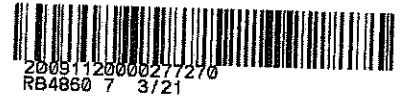
“Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community, or the minimum standards established pursuant to the Architectural Guidelines, Rules and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

“Declarant” shall mean Habitat for Humanity, Orange County, N. C., Inc., a North Carolina nonprofit corporation, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant.

“Declarant Control Period” shall mean the period of time during which Declarant holds a fee interest in any portion of the land described in **Exhibit A** attached hereto and incorporated herein.

“Declaration” shall mean this Declaration of Creation of Phoenix Place, a North Carolina planned Community, and any amendments hereto or restatements hereof.

“Governing Documents” shall mean, collectively, this Declaration, the Articles of Incorporation, the



Bylaws, the Architectural Guidelines, the Stormwater Operations and Maintenance Plan, and the Rules and Regulations, as the same may be amended from time to time.

“Lot” shall mean any separate parcel of land within the Community designated for separate ownership or occupancy and residential use.

“Member” shall mean and refer to every person or entity entitled to membership in the Association as provided in Article III below.

“Mortgage” shall mean a deed of trust recorded at the Orange County Registry that is a lien against any Lot. “Mortgagee” shall refer to a beneficiary or holder of a Mortgage. A “First Mortgage” shall be a Mortgage having priority over all other Mortgages encumbering a Lot. “First Mortgagee” shall refer to a beneficiary or holder of a First Mortgage.

“Owner” shall mean and refer to an owner of record of a fee simple interest in any Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be more than one Owner of any single Lot.

“Planned Community Act” shall mean and refer to the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

“Recorded Document” shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of Orange County, North Carolina.

“Rules and Regulations” shall mean the rules and regulations for use and occupancy of the Lots and the Common Area, as they may be adopted, supplemented, modified, restated or superseded, from time to time, pursuant to Article IV below.

“Stormwater Operations and Maintenance Plan” shall mean the Stormwater Operations and Maintenance Plan for all engineered stormwater facilities within the Community of record at Book ____ Page ____, Orange County Registry, and any amendments thereto.

Article III. Creation of and Membership in Phoenix Place Homeowners Association.

Every person or entity who is an owner of a fee or undivided fee interest in any of the Lots shall be a member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The Association shall be organized and governed as follows:

- 3.1. Purposes and Duties. The purposes and duties of the Association shall be:
 - A. To maintain and preserve all parcels of land, rights-of-way and easements owned by the Association at any time, and all roads, streets, decorative and protective structures, landscaped areas and other improvements located thereon, if any;
 - B. To enforce the provisions of this Declaration and the other Governing Documents;
 - C. To perform all duties and functions allotted to owner’s associations pursuant to Article 3 of the Planned Community Act;
 - D. To promote and to protect the enjoyment and beneficial use and ownership



of the Lots; and

E. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Common Area.

3.2. Voting Rights and Meetings. On matters of Association business submitted to vote of the membership, there shall be one (1) vote per Lot, regardless of the number of Owners of a Lot; provided, however, that for so long as the Declarant owns at least one (1) Lot, it shall be entitled to three (3) votes per Lot owned. Unless otherwise provided herein or in the Bylaws or the Planned Community Act, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the Bylaws. The members of the Association shall meet as provided by the Bylaws.

3.3 Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Association, which Bylaws shall be binding upon all Members, their mortgagees, lessees, agents and invitees.

Article IV. Restrictions.

4.1 Restrictions.

a. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for Declarant to assist in the sale of any property or portion thereof as described in **Exhibit A**, offices for any property manager retained by the Association, and business offices for Declarant or the Association) consistent with this Declaration and any amendment or supplement hereto.

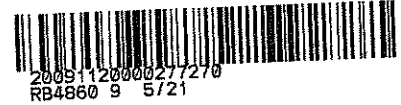
b. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition upon any Lot or Common Area which shall tend to diminish or destroy the beauty and/or the enjoyment of the Community.

c. No noxious or offensive activity shall be conducted upon any Lot or Common Area, nor shall anything be conducted thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the Community or the occupants of any Lot. There shall not be maintained upon any Lot or Common Area any plants, animals (other than household pets as hereinafter specified and allowed), devices, or other things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community.

d. Household pets may be maintained in or upon any Lot in accordance with the Rules and Regulations. Household pets are permitted outside the pet owner's Lot only if leashed.

e. No commercial signs of any kind (including, without limitation, "for rent," "for sale," and other similar signs) or property identification signs shall be erected or maintained on any Lot except with the written permission of the Board of Directors, or except as may be required by legal proceedings, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary.

f. Garbage and trash shall be disposed of promptly and periodically at the Lot Owner's expense; provided, however, that Declarant shall for an initial period of time contract with a third party to pick up Lot Owners' garbage provided same is properly bagged, placed within an acceptable container and placed at the curb or other suitable location. All costs of Declarant in meeting its responsibilities pursuant to this subsection shall be common expenses payable through assessments levied against the Lot Owners pursuant to



Article V below. Lot Owners shall not allow garbage, trash or other waste to accumulate on any Lot or any portion of the Property. No burning of trash, construction debris, trees, limbs, stumps, leaves or yard waste shall be allowed on any Lot or any portion of the Property. All trash, garbage and refuse stored outside of a dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any street or any other Lot.

g. No structure of any temporary character shall be placed upon a Lot or the Common Area at any time.

h. No tent, barn, storage shed (except for a shed approved in advance by the Declarant or the Board of Directors), garage, tree house or other similar outbuilding or structure shall be placed on any Lot or Common Area at any time, either temporarily or permanently.

i. No junked or wrecked car shall be kept on any Lot for more than seven (7) consecutive days, nor shall any car remain in or on any Lot on blocks or jacks for more than seven consecutive (7) days. For the purposes of this paragraph, "junked or wrecked car" shall include, but not be limited to, any vehicle which cannot for any period of more than seven (7) consecutive days move under its own power, and any car with obvious and serious damage, and any car that does not have a current license plate and sticker. No junked or wrecked car shall be kept on any Common Area within the Community.

j. No vehicle located on a Lot or Common Area may be used as a dwelling, even temporarily.

k. No Lot or dwelling located thereon shall be used for any commercial or professional purpose, and no professional person shall maintain public office on any Lot or in any dwelling located thereon; provided however, that this restriction shall not prevent the use of any Lot or dwelling located thereon, by a professional person for his own private office not connected with visits from patients, clients or members of the public.

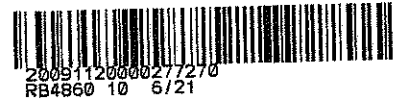
l. Lot Owners shall be bound by the provisions of any governmental regulations or zoning provisions relating to their Lots.

m. No dwelling shall be erected on less than one Lot and no Lot shall be subdivided; however, owners of adjoining Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances, and with this Declaration.

4.2 Rules and Regulations. In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Lots and Common Areas. In order to adapt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to adopt and change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be adopted, amended, supplemented and/or rescinded and restated as set forth in this Section 4.2.

4.2.1 Declarant's Authority. During the Declarant Control Period, the Declarant shall have the unilateral right to adopt, amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Association or to other Owners; provided that no such action by Declarant may have a materially adverse effect on title to or marketability of any Lot.

4.2.2 Board Authority. The Board may adopt, amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail to all Members concerning any such



proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.2.1 above.

4.2.3 Members' Authority. Members representing more than Fifty (50%) percent of the total votes in the Association, at an Association meeting duly called for such purpose, may adopt, amend, supplement and/or rescind and restate the Rules and Regulations.

4.2.4 Conflicts. Nothing in this Article shall authorize the Board to modify, repeal or expand the Architectural Guidelines or any provision of this Declaration. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control.

4.3 Common Area Administrative Rules. The Board may promulgate and enforce administrative rules and regulations governing use of the Common Areas without notice to the Members or any hearing.

4.4 Notice to Purchasers and Mortgagees. All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Rules and Regulations, as they may be adopted, amended, expanded, and otherwise modified hereunder. Each prospective purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser, Member or mortgagee upon written request and payment of the reasonable cost of such copy.

Article V. Costs and Assessments

5.1 Budgeting and Allocating Common Expenses. At least Sixty (60) days before the beginning of each fiscal year, the Board shall prepare and approve a budget of the estimated common expenses for the coming year. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in this Article V. The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment to fund the common expenses. The common expenses shall be shared equally among the Owners of all of the Lots on a per Lot basis. Assessments for common expenses shall be levied at least annually in accordance with this Article.

5.2 Special Assessments. In addition to other authorized Base Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

5.3 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and, if required by this Declaration or the Bylaws, an opportunity for a hearing before levying



any Specific Assessment under this section 5.3.

5.4 Authority to Assess Owners; Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the later of: (a) the closing on the sale of a Lot to a person or entity other than Declarant, or (b) the issuance of a certificate of occupancy for a residential dwelling on such Lot. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

5.5 Liability for Assessments.

Each assessment levied by the Association, together with interest, late charges and the costs of collection thereof, including reasonable attorney's fees, shall be the personal obligation of all the Owners of each Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the assessment, interest, late charges and costs. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of the notice that it is due, the Association may impose reasonable charges for late payment of assessments, not to exceed the greater of Twenty Dollars (\$20.00) per month from the date of mailing of the notice or ten percent (10%) of any assessment installment unpaid, and the assessment, together with the late charges thereon and the costs of collection thereof (including reasonable attorney's fees) shall constitute a lien on the delinquent Lot when a claim of lien is filed by the Association against the Lot in the Office of the Clerk of Superior Court of Orange County, North Carolina. The lien may be foreclosed by the Association as provided in N.C.G.S. § 47F-3-116.

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

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

The sale or transfer of any Lot shall not affect the assessment lien, or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure pursuant to a First Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots subject



to assessment under this Article, including the subsequent Owner of the foreclosed Lot.

5.6 Statement of Account. Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall bind the Association in favor of persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within fourteen (14) days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquires its interest after requesting such statement.

5.7 Exempt Property. The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments: (a) all Common Area; (b) any property dedicated to and accepted by any governmental authority or public utility; and (c) any and all property owned by the Declarant.

Article VI. Architecture and Landscaping

6.1 General. No structure or thing, including but not limited to fences, shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any Lot except pursuant to approval and in compliance with this Article and the Architectural Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of a dwelling located on his or her Lot without approval; provided that modifications to the interior of a dwelling visible from outside the structure shall be subject to approval. Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by Declarant or its designee in its sole discretion.

6.2 Architectural Review.

6.2.1 By Declarant. Each Owner, by executing this Declaration or by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that Declarant has a substantial interest in the quality and appearance of improvements within the Community and in determining that the improvements within the Community do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his or her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other person. Declarant's rights reserved under this Article shall continue or as long as Declarant owns any portion of the real property described in **Exhibit A**, unless earlier terminated by Declarant by a Recorded Document.

Declarant may, in its sole discretion, designate one or more persons from time to time to act on its



behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other person or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other person or committee shall be limited to such matters as are specifically delegated to it by Declarant.

6.2.2 Architectural Review Committee. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced at the Board's discretion. The members of the ARC need not be Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or expiration of the Declarant Control Period, the Association shall have no jurisdiction over architectural matters.

6.3 Reviewer. For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

6.4 Guidelines and Procedures.

6.4.1 Architectural Guidelines. Declarant may prepare Architectural Guidelines applicable to Lots which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Orange County, North Carolina.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in **Exhibit A**, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable



notice during the Association's business hours. In Declarant's discretion, such Architectural Guidelines may be recorded at the Orange County Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

6.4.2 Procedures. Except as the Architectural Guidelines otherwise specifically provide, no activity described in Section 6.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as deemed necessary to consider any application.

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

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Reviewer may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three (3) business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have Ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

In any event, the Reviewer shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 6.6.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of



commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Member.

The Reviewer may by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

6.5 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

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

6.7 Limitation of Liability. The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction. Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the ARC, and any members thereof as provided in the Bylaws.

6.8 Certificate of Compliance. Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that such Owner's Lot has no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.



6.9 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Article VII. Maintenance and Repair

7.1 General. All areas within the Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the Community-Wide Standard, and to all other standards stated in this Declaration, any amendments or supplements hereto, the Bylaws, and the Rules and Regulations of the Association. The Association and the individual Owners shall be responsible for such maintenance, as provided in this Article.

7.2 Declarant and Association Responsibility. For a period of twenty (20) years from the date of recordation of this Declaration at the Orange County Registry, Declarant shall maintain the following:

- a. All landscaped rights-of-way and all entry features;
- b. All streets, roadways and sidewalks within any easement or licenses owned or held by the Association, unless such streets, roadways or sidewalks are maintained by some governing authority; and
- c. All Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon.

All costs of Declarant in meeting its responsibilities pursuant to this Section shall be common expenses payable through assessments levied against the Lot Owners pursuant to Article V above. Upon the expiration of said 20-year period, the responsibility of maintaining the above referenced items shall automatically be assigned to the Association and Declarant shall thereafter be completely released from any maintenance responsibility within the Community, except for as provided in Section 7.3.

7.3 Owner's Responsibility. Each Owner shall maintain his Lot and all unimproved Common Area along the boundaries of his Lot (e.g., area between lot line and curb). Each Owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his Lot. Each Owner's maintenance of his Lot and adjoining, unimproved Common Area shall include but not be limited to:

- a. Keeping the area free and clear of all litter, trash, refuse and wastes;
- b. Mowing lawns on a regular basis;
- c. Pruning trees and shrubs;
- d. Watering lawns;
- e. Keeping exterior lighting and mechanical facilities in working order;
- f. Keeping lawn and garden areas alive;
- g. Removing and replacing any dead plant material;
- h. Keeping vacant land well maintained and free of trash and weeds;



- i. Keeping parking areas and driveways in good repair;
- j. Complying with all governmental health and police requirements;
- k. Repainting of all structures; and
- l. Repair of exterior damage to all structures.

7.4 Association's Right to Perform Owner's Responsibility. If any Owner or occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant or the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. All Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or Declarant, the Association may charge a Specific Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article V above.

7.5 Cost of Maintenance. All costs of Declarant and/or the Association in meeting its responsibilities pursuant to this Article shall be common expenses.

7.6 Maintenance of Duke Power Utility Easement Area. Duke Power has an 128' utility easement over the western portion of the Property (the "Easement Area"). Owners have the option to request that Duke Power maintain the Easement Area by using brush hog instead of using herbicides.

Article VIII. Insurance.

8.1 The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

a. Blanket property insurance for all insurable improvements on the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried,



except as otherwise provided in this Section.

b. Commercial general liability insurance on the Common Area. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Common Area. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, Declarant, any property manager, the Association, the Board, the officers of the Association, the ARC, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Common Area.

c. Workers' compensation insurance and employers' liability insurance, if and to the extent required by law.

d. Directors' and officers' liability coverage.

e. Such additional insurance as the Board, in its business judgment determines advisable.

8.2 Premiums for all insurance shall be common expenses unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

8.3 The policies may provide for a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment pursuant to Article V above.

8.4 The Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims arising in connection with the ownership, existence, use or management of the Common Area and provide:

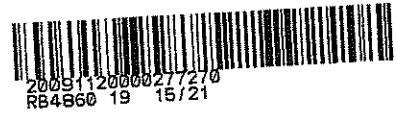
a. a waiver of subrogation as to any claims against the Association's board of directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests;

b. a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

c. an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal

Article IX. Expansion of the Community

Expansion by the Association. Upon termination of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, if authorized by the affirmative vote of Members representing Sixty-seven (67%) percent of the total existing votes in the Association. The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Any such Annexation Declaration shall be



executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

Article X. Declarant Rights.

10.1 Reasonable Rights To Develop. Declarant and/or its contractors or transferees may construct improvements to or within the Community including to the Lots. The completion of such construction and the sale or other disposal of the Lots is essential to the establishment and welfare of the Community. Therefore, during the Declarant Control Period, nothing in this Declaration or the other Governing Documents shall be construed to:

- a. prevent Declarant, approved builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Community;
- b. prevent Declarant or its representatives from erecting, constructing, and maintaining anywhere in the Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing Phoenix Place as a residential Community and disposing of the Lots by sale, lease, or otherwise;
- c. prevent Declarant from maintaining such signs and conducting such activities in any part of the Community owned by Declarant or the Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Lots; or
- d. prevent Declarant from placing and utilizing on Lots or other property which it owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

Nothing in this Section shall give Declarant the right to damage any Lot or other property not owned by Declarant.

10.2 Marketing and Sales Activities. During the Declarant Control Period, Declarant and builders authorized by Declarant may construct, relocate, maintain and carry on upon any Lot Declarant owns or upon portions of the Common Area, such facilities and activities as may be reasonably required, convenient or incidental to the construction, marketing or sale of Lots, as determined in Declarant's sole opinion. Such facilities and activities may include, without limitation, business offices, signs, model homes, and sales offices. There shall be no limit on the number or size of such facilities. Declarant and authorized builders shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Common Area upon termination of its rights under this Section.

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

10.4 Right to Approve Additional Covenants. During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's prior written approval. Any



instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

10.5 Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights or obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless evidenced by a Recorded Document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.5 Right to Approve Changes in Community Standards. During the Declarant Control Period, no amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without Declarant's prior written approval.

10.6 Easement to Inspect and Right to Correct.

10.6.1 Easement. Declarant reserves for itself and such other persons as it may designate perpetual non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of accessing, inspecting, testing, redesigning or correcting any portion of the Community including Lots and Common Areas. Declarant shall have the right to redesign or correct any part of the Community, including Lots owned by Declarant and Common Areas.

10.6.2 Right of Entry. Entry onto a Lot shall be after reasonable notice, except in an emergency. Entry into a structure on a Lot shall be only after Declarant notifies the Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Lot to perform such activities.

10.6.3 Damage. Declarant shall promptly repair any damage to a Lot or the Common Area resulting from the exercise of the easement or right of entry described in subsections 10.6.1 and 10.6.2 of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Lot, and entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

10.7 Amendment to Declaration. During the Declarant Control Period, Declarant shall have the right to amend or rescind and restate this Declaration by a Recorded Document, without approval or joinder of the Association or any other Party.

Article XI. Easements

11.1 Owners' Easements of Enjoyment. Except as limited by this Declaration and the Planned Community Act, every Owner shall have a right of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. Except as limited by this Declaration and the Planned Community Act, any Owner may delegate his rights of use and enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Property, or his guests.

11.2 Walks, Drives, Parking Areas, and Utilities. All areas of the Community shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all stormwater control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall



be established by the Declarant or by its predecessor in title, prior to the conveyance of the Property designated to be the Common Area to the Association; and the Association shall have the power and authority to grant and establish further easements upon, over, under, and across the Common Area.

11.3 Encroachments and Declarant's Easement to Correct Drainage. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Common Area to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a parcel or section, the Declarant reserves a blanket easement and right-of-way on, over, and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected Property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant.

11.4 Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot and all Common Area. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

11.5 Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, the Articles of Incorporation, use restrictions, Rules and Regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Community, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Community. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Community as well as any Lot in the Community; (ii) the right to tie into any portion of the Community with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Common Area; (v) the right to carry on sales and promotional activities in the Community; (vi) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant and any builder or developer authorized by Declarant, may use residences, offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole expense. This section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

11.6 Fence Easement. Declarant hereby reserves an easement across any Lot which borders upon



or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

11.7 Easement to Government Entities. An easement is hereby established for municipal, State or public utilities serving the area, their agents and employees, over all Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, garbage collection, mail delivery, police and fire protection.

11.8 Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than four (4) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his home. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work as is reasonably practicable.

11.9 Pedestrian Easements. To the extent that they are not maintained by the Owners of those portions of the Property on which they are located, the Association shall maintain all pedestrian access easements required to be located on any portion of the Property pursuant to approved subdivision plan approvals and/or pursuant to plats of the Property recorded in the register of deeds of the county in which the Property is located, and/or pursuant to written maintenance agreements with the municipal or county authorities.

Article XII Fines and Suspension of Privileges or Services.

Notwithstanding any other provision herein, the Board may impose fines on an Owner and/or suspend an Owner's right and privilege to use certain Common Area for failure of that Owner, his lessees, agents or invitees, to abide by this Declaration, the Rules and Regulations or the administrative rules and regulations governing Common Area. The Board shall not impose any such fine or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Board and notice of the Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured.

Article XIII. Miscellaneous

13.1 Parties Bound. All persons and entities acquiring any interest in any of the Lots, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

13.2 Duration. The provisions of this Declaration shall run with and bind the Property perpetually, unless and until the Community is terminated pursuant to N.C.G.S. Section 47F-2-118.

13.3 Amendment. Except as provided in Section 10.7 above, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Lots, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded to be effective.

13.4 Enforcement. The Declarant, any Owner and/or the Association shall have the right to



enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Declaration. The Declarant, the Association or any Lot Owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration. The Declarant, the Association and/or any Owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Owner(s).

13.5 Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

13.6 Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be made by a Recorded Document, executed by both the Declarant and the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

13.7 Variances. Notwithstanding anything to the contrary contained herein, the Declarant and/or the Association or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if the Declarant or the Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

13.8 Annexation Notification. All Property located within the Community is subject to annexation by the Town of Chapel Hill, North Carolina.

13.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

13.10 Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

13.11 Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

13.12 References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.



IN WITNESS WHEREOF, Habitat for Humanity, Orange County, N.C., Inc., as the Declarant hereunder, has caused this instrument to be executed by its duly authorized President, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

Habitat for Humanity, Orange County, N.C., Inc.
a North Carolina nonprofit corporation, Declarant

By: Sylvia A. Black
Vice President

STATE OF North Carolina
COUNTY OF Orange

I, Meighan Lela Carmichael, a Notary Public of the County and State aforesaid, certify that Sylvia S. Black personally appeared before me this day and acknowledged that he is Vice President of Habitat for Humanity, Orange County, N.C., Inc., a North Carolina nonprofit corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this 19 day of November, 2009.

NOTARY SEAL

Meighan Lela Carmichael
Signature of Notary Public
My Commission Expires: 12/14/2013

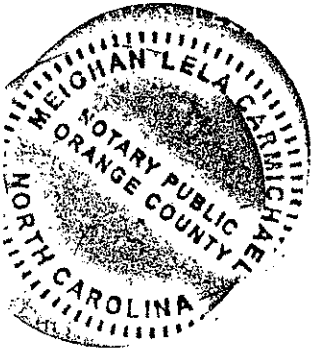




EXHIBIT A

Land Initially Submitted

BEING all of that real property shown on plat of survey entitled, "FINAL PLAT AND RECOMBINATION PLAT - PHOENIX PLACE", of record at Plat Book 106 Page 66, Orange County Registry.