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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICrIONS

SOMERSET

**DRAWN BY AND MAIL TO:**

Parker, Poe, Adams & Bernstein L.L.P., (Box 10)  
2500 Charlotte Plaza  
Charlotte, NC 21244

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**SOMERSET**

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ASSOCIATION, INC. A NONPROFIT CORPORATION**

**EXHIBIT "B" - BYLAWS OF SOMERSET OWNERS ASSOCIATION, INC.**

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

SOMERSET

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 33 day of January, 1994 by CRESCENT RESOURCES, INC, (formerly Crescent Land & Timber Corp.), a South Carolina corporation, hereinafter referred to as "Declarant". All capitalized terms used herein shall have the meanings set forth in Article 1 or elsewhere in this Declaration.

STATEMENT OF PURPOSE

Declarant is the owner of certain property located in the Town of Cary, Wake County, North Carolina, which is more particularly described on that certain map recorded in Map Book 1994 Page 1846 in the Office of the Wake County Register of Deeds. Declarant desires to create on the property shown on that map an exclusive residential community of single-family residences to be named SOMERSET [the "Development"].

Declarant desires to ensure the attractiveness of the Development, to prevent any future impairment thereof, to prevent the erosion and enhance the value and amenities of all properties within the Development, and to provide for the maintenance and upkeep of the Common Area within the Development, including, but not limited to the Amenity Area and the Entrance Monument. As part of such Common Area, Declarant desires to construct and provide for the maintenance and upkeep of a lighted Entrance Monument to be located at the entrance to the Development, which Entrance Monument will be for the common we and benefit of all Owners.

To these ends, Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant desires to provide for a system whereby the Owners will pay for the maintenance and upkeep of the Common Areas and to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities.

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To this end the Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "A" and incorporated herein by reference, SOMERSET OWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "B" and incorporated herein by reference.

NOW, THEREFORE, Declarant, by this Declaration, does declare that all of the property described herein is and shall be held, transferred, said, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property described herein and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I

#### DEFINITIONS

Section 1.1. "Additional Property" shall mean and refer to additional real estate contiguous, adjacent to or neighboring the Property, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of \*Open 2.2 of this Declaration.

Section 1.2. "Amenity Area" shall mean and refer to the parcel labeled "Recreation Area" on the Map, together with the Cabana, Pool, Tennis Courts and Parking Area which shall be constructed thereon for the common use and enjoyment of all Owners.

Section 1.3. "Approved Builder" shall mean and refer to one or more persons or companies, in the business of building and selling homes to individuals, selected by Declarant to buy Lots and COSMETIC homes for sale in the Subdivision.

Section 1.4. "Articles of Incorporation" shall mean and refer to the Articles of incorporation for the Association attached as Exhibit "A" hereto and incorporated herein by reference.

Section 1.5. "Association" shall mean and refer to SOMERSET OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.6. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.7. "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit "13" hereto and incorporated herein by *reference*.

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Section 1.B. "Cabana" shall mean and refer to that building to be constructed in the Amenity Area for the common use and enjoyment of all of the Owners, their families, guests and invitees as more particularly addressed in Soak" ME

Section 1.9. "Common Area" or "Common Areas" shall mean and refer to the Amenity Area, Entrance Monument, Landscape Easements and Public Roads (prior to their acceptance for maintenance by the Town of Cary or other governmental entity), collectively, and any other property shown and designated on the Map as "Common Area." "Common Open Area." "Common Open Space" or "COS." The Common Areas shall be owned by the A&SOCI26011 for the common use, benefit and enjoyment of the Owners.

Section 1.10. "Declarant" shall mean and refer to Crescent Resources, inc., its successors and assigns.

Section 1.11. "Development" shall mean and refer to Somerset, a single-family residential development proposed to be developed on the Property by Declarant.

Section 1.12. "Entrance Monument" shall mean and refer to the stone monuments and entrance signs located on the parcel designated "Recreation Area" on the Map, together with lighting, irrigation system, landscaping and other improvements to be constructed thereon, to be used as an entryway for the Subdivision, and for the purposes set forth in Section 71.

Section 1.13. "Landscape Easements" shall mean and refer to the easements created by the document entitled "Permanent Landscaping, Temporary Landscaping and Signage Easements" recorded in Book 6180, Page 127, Wake Public Registry.

Section 1.14. "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Map, which Lots do not include the Common Area.

Section 1.15. "Map" shall mean and refer to (i) the map of Somerset Subdivision recorded in Map Book 1994, Page 124k in the Office of the Register of Deeds for Wake County, North Carolina, and (ii) any revisions, supplements or amendments of such map or maps recorded in such Office.

Section 1.16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.17. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 1.18. "Mortgagee" shall mean the current and holder of a Mortgage at the time such term is being applied.



Section 1.19 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of *for* simple title to any Lot, including the Declarant if it owns any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 "Parking Area" shall mean and refer to the parking lot to be constructed over the Amenity Area for the common use, benefit and enjoyment of the Owners, their families, guests and invitees in connection with their use of the Amenity Area as more particularly addressed in Section 4.11.

Section 1.21 "Pool" shall mean and refer to that certain swimming pool which shall be constructed within the Amenity Area for the common use and benefit of the Owners, their families, guests and invitees as more particularly addressed in Section 4.9.

Section 1.2a "Property" shall mean and refer to the property shown on the Map, including the Lots and Common Area, and Public Roads (prior to such roads being accepted for public maintenance by the Town of Cary or other governmental entity), together with any leasehold interest or easement which the Association has or may hereafter acquire in any property adjacent to the Development.

Section 1.23 "Public roads" shall mean and refer to the roads and cul-de-sacs in the Subdivision dedicated to the public and shown on the Map, all to be maintained by the Association (subject to potential reimbursement from Declarant as set forth in Section 4.6 of this Declaration) until accepted for public maintenance by the Town of Cary or other governmental entity,

Section 1.24 "Street Lights" shall mean and refer to those certain Street lights which may be constructed upon and over the right of way of the Public Road which are to be maintained by the Town of Cary.

Section 1.25 "Subdivision" shall mean and refer to Somerset, as the same is shown on the Map.

Section 1.26 "Tennis Courts" shall mean and refer to those certain tennis courts constructed over the Amenity Area for the common use and benefit of Owners, their families, guests and invitees as more particularly addressed in Section 4.14.

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ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
THE ASSOCIATION

Section 2.1. qtr. The real property which is and shall be held, transferred, sold conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in Wake County, North Carolina and is the Property, as defined above and as more particularly described and shown on the Map.

Section 2.2. Additions to the Property.

(a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing a Supplemental Declaration in the Office of the Register of Deeds for Wake County, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to or imposed upon the Additional Property may be altered or modified by the Supplemental Declaration as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property (other than the Additional Property), nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Section 113 of this Declaration.

ARTICLE 3

PROPERTY RIGHTS

Section 3.1. Ownership of Common Areas. Declarant shall convey to the Association the COPM1011 Areas to be owned by the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas (except for the Public Roads upon their acceptance for public maintenance) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

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Section 3.2. Owners' Right to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas; and

(d) all easements and restrictions of record including, but not limited to, the Landscape Easements; and

(e) the provisions of Article 7 of this Declaration,

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities located thereon to the members of his family, his guests, or tenants occupying the Owner's lot pursuant to a lease agreement.

ARTICLE

THE ASSOCIATION

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot

Section 4.2. Classes of Lots and WAVA Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote per Lot. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights

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appurtenant to said Lot shall be exercised by them, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot

(b) Class B Lots. Class B Lots shall be Lots owned by Declarant or Approved Builder which have not been conveyed to purchasers who are not at with the Declarant or Approved Builder. Each Class B Lot shall entitle the Owner of said Lot to four (4) votes for each Class B Lot owned by it

Section 4.3. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier

- (a) when the number of votes in the Class A membership held by Owners occupying homes in the Subdivision equals the total number of votes outstanding in the Class B membership and no Additional Property remains which may be made subject to the terms of this Declaration; or
- (b) in the expiration of five (5) years after the recordation of this Declaration, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier time.

Section 4.4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 4.5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days' prior written notice to the manager without payment of a termination fee.

Section 4.6. Maintenance. Prior to their acceptance for public maintenance, the Public Roads shall be maintained by the Association, provided that the Declarant, in its sole discretion, has the right to reimburse the Association for maintenance cost until the Public Roads are accepted for maintenance by the Town of Cary or other governmental entity. Such

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maintenance shall include repair and reconstruction, when necessary. Maintenance of the Public Roads shall conform to the standard of maintenance (if one is ascertainable) which would be required by the Town of Cary or other governmental entity before it would accept such Public Roads for maintenance.

The Common Areas, together with all utilities, easements and amenities located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the ASSOC

(a) Maintenance of the Entrance Monument shall include maintenance, repair and reconstruction, when necessary, of the stone monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the stone monuments and signage located thereon;

(b) All Common Areas, including, but not limited to, the Amenity Area and Entrance Monument shall be clean, free from debris and maintained in an orderly condition, together with the landscaping thereon (if any) in accordance with the highest standards for private parks, such maintenance shall include removal and replacement (if necessary) of any landscaping, utilities, or improvements located therein;

(c) Maintenance for the Cabana shall include all interior and exterior maintenance (including, where necessary, repair and reconstruction) of the Cabana building, sidewalks, walkways, landscaping and other facilities appurtenant to the Cabana, including the payment of all utility charges therefor.

(d) Maintenance for the Pool shall include the maintenance, repair and reconstruction, when necessary, of the Pool, including all drainage, lighting, fencing, paving and other facilities appurtenant thereto, and including the payment of all utility charges therefor.

(e) Maintenance of the Parking Area shall include repair, maintenance, and reconstruction, when necessary, of the Parking Area; and irrigation and landscaping, as necessary, including payment of the electrical costs of lighting and irrigation (if any);

(f) Maintenance of the Landscape Easements shall include the maintenance, repair and replacement, when necessary, of any improvements constructed upon such easements, including but not limited to, the performance of any and all of Grantee's obligations set forth in the document recorded in Book 6180, Page 327 in the Wake Public Registry; and

(g) Maintenance of the Tennis Courts shall include the maintenance, repair and replacement, when necessary, of the surface of the courts, any improvements located thereon, including, but not limited to, the nets and any fencing.

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Oil The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof The Owners of such Lots shall be responsible for same.

Section 4.7- ihanmlgost The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements located on all Common Arms which the Association is obligated to maintain and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Austral Assessments, as described in Seenkii\_51(0).

Section 4-g. P Alen Declarant shall construct and the Association shall maintain the paved Parking Area on and over a portion of the Amenity Area. The Parking Area shall be aimed and maintained in order to provide parking for the Owners. and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees in connection with their use of the Amenity Area.

Section 4-9 Eng Declarant shall construct and the Association shall maintain the Pool 013 and over a portion of the Amenity Area The Pool shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Ownets, their families, guests and invitees.

Section 4.120. jeggisSni.. Declarant shall construct and the Association shall maintain the Tennis Courts on and over a portion of the Amenity Arm The Tennis Courts shall he constructed and maintained for the cosh ~~ME~~ and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitee&

SiinfienLL.a. Cabana Declarant shall construct and the Association shall maintain the Cabana on and over a portion of the Amenity Area The Cabana shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees in connection with their use of the Amenity Area.

#### ARTICLE 5

#### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section \$1. Creation of the IL ' S:fbitsgtAnina\_  
Annual, Special and Special individual Assesnmeng. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Annual Assessments, Supplemental Annual Assessments, Special Assessments and Special IndividualAssessments, as hereinafter defined, established

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and collected as hereinafter provided. Any *such assessment* or charge, together with interest, cases, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment falls due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

**Section 5.2. Purpose of Annual Assessments.** The assessments to be levied annually by the Association against each Lot ("Annual Assessments") shall be used as follows:

- (a) to repair, clean, maintain and reconstruct, when necessary, the Common Areas, including the Cabana, Pool, Landscape Enhancements, Tennis Courts and Parking Area, as more particularly set forth in **Section 4.6** of this Declaration;
- (b) to maintain or caused to be maintained the Public Roads to the standard of maintenance (if one is ascertainable) which would be required by the Town of Cary or other governmental entity before it would accept such Public Roads for maintenance;
- (c) to pay all ad valorem taxes levied upon the Common Areas and any other property owned by the Association;
- (d) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- (e) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (f) to maintain contingency reserves as to the amounts described in subsection (a) and (b) above for the purposes set forth in Section 4.7 hereof in amounts as determined by the Board of Directors.

**Section 5.3. of Annual Assessments.** The Annual Assessments provided for herein shall commence as to each Lot on July 1, 1995. The Annual Assessments for the calendar year beginning July 1, 1995 shall be One Hundred Twenty-Five Dollars (\$125.00) per Lot, which amount shall be due and payable no later than July 31, 1995. The Annual Assessments for the calendar year beginning January 1, 1996 shall be Two Hundred Fifty Dollars (\$250.00) per Lot and shall be due and payable no later than January 31. The Annual Assessments for each and every year beginning each January 1 thereafter shall be in an amount as set by the Board of Directors, in accordance with **Section 5.4**, and shall be due and payable no later than January 31 of each such calendar year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least

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thirty (10) days prior to January 1 of such calendar year. and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the first installment due, to each Owner on or before January 1 of such year. Failure of the Association to send the notice described in this Section Si shall not relieve the Owners of their liability for Annual Assessments, Notwithstanding the foregoing, the Board of Directors may alter the dates of the year for setting the Annual Assessments and may increase or decrease the frequency of collection of Annual Assessment installments in any reasonable manner.

Section E5                      5.3                      5.3.

(a) For calendar years beginning January 1, 1997 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessments each year by a maximum amount equal to the previous year's Annual Assessments times the greater of (i) ten percent (10%), or (ii) the annual percentage increase in the Consumer Price Index. All Urban Consumers, United States, All Items (1982-34 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living, if the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the maximum amount set forth in (a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessments at an amount not in excess of the maximum set forth in Subparagraph (a) above (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and determine later that year that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"). The sum of the Annual and Supplemental Annual Assessments for any year shall not exceed the applicable Maximum Annual Assessment for such year other than as set forth in Section 5.3 hereof.



Section 5.6. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of delivering, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area, including the Public Roads, Pool, Cabana, Parking Area, Tennis Courts or Entrance Monument, including fixtures and personal property related thereto. Provided that any such assessment must be approved by a vote of no less than two-thirds (2/3) of the WPM of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5.6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Lot Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including the Public Roads (prior to their acceptance for public maintenance), Pool, Cabana, Tennis Courts or Parking Area, whether occasioned by any act or omission of such Lot Owners, members of such Lot Owner's family, or such Lot Owner's agent, guests, employees or invitees and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or other charges imposed against any particular Lot Owner relative to such Lot Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5.6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least ten (10) days prior to the date such Special Individual Assessment is due.

Section 5.7. Assessment Rate.

(a) Subject to the exception set forth in subsection (b) below, Annual, Supplemental Annual and Special Assessments must be fixed at a uniform rate for all Lots;

(b) Annual, Supplemental Annual and Special Assessments for each Lot owned by Declarant or Approved Builder and unoccupied as a residence shall be one-third (1/3) of the Annual, Supplemental Annual and Special Assessments for each other Lot in the Subdivision not owned by Declarant, or Approved Builder.

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ARTICLE 6

GENERAL ASSESSMENT PROVISIONS

Section 6.1. Certification Regarding Assessments. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.2. Effect of Nonpayment of Assessments! Remedies of the Association.

Any Assessment (or installment thereof) not paid by its due date as set forth in Section 53 hereof, or any other assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 6.3. Subordination of Assessments. The lien of the assessments provided for in Article 6 shall be subordinate to the lien of any first Mortgage on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual or Special Assessment, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE 7

RESTRICTIONS

Section 7.1. Land Use, Building Type and Residential Restrictions. All Lots in the Subdivision shall be known and described as residential lots and shall be used only for private

residential and recreation purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding two stories in height above ground shall be erected or permitted to remain upon any Lot. No mobile home, modular home or shell home may be erected or permitted to remain on any Lot. A private garage or outbuildings incidental to the residential use of the Lot are expressly permitted upon the condition that they are not rented, leased or otherwise used for remuneration subject to the other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence.

**Section 7.1 Dwelling Size.** The square footage requirements hereinafter set forth are enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, and unheated storage areas, decks or patios.

No dwelling erected upon any Lot shall contain less than 2000 square feet.

**Section 7.1.3 Construction and Quality.** All buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No single-family residential dwelling costing less than One Hundred Thousand Dollars (\$100,000.00) (in terms of 1994 dollar value) shall be permitted on any Lot. No building shall be erected unless it is completely underpinned with a solid brick or brick, stone or stucco covered block foundation. The exterior surface of any building shall not be of asbestos shingle siding, imitation brick or stonoroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or man-tenant structure or building erected on or located on any Lot shall be aesthetically compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot. All buildings shall have roofs (except for dormers) of not less than 6 in 12 pitch and not less than 12 inch overhang, covered with slate, cedar shakes, tile or fiberglass shingles. Tin or rolled roofing material is not permitted. The exterior of all houses and other structures must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities.

**Section 7.4. Temporary Structures.** No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building, or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed or erected on any Lot or attached to any residence. However, nothing herein shall prohibit Declarant or Approved Builder from erecting or moving temporary buildings or trailers onto the Lots owned by them, to be used for storage, construction or sales offices. One, single-story storage or utility building no larger than One Hundred Fifty (150) square feet may be constructed in the backyard of each Lot provided that: (i) the building is constructed of hardboard siding; and (ii) the

color of the siding and shingles on the building match claim of the siding and shingles on the residence limited upon the Lot.

41.21115. Ongoing Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front setback (as measured from the street right-of-way), side setback (as measured from the street right-of-way for the street-side setback of a corner Lot or the side lot line for a non-corner Lot or for the non street-side setback of a corner Lot which line is not adjacent to a street right-of-way), or rear setback (as measured from the rear lot line) as such setbacks are noted on the Map. Provided, however, that a utility or storage building built pursuant to the requirements specified in Section 7.4 above may be constructed within the rear or side setback of any Lot provided that such building is built no closer than ten (10) feet from the rear or side line of the Lot. In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements. No masonry mailboxes or other structures or improvements may be constructed or placed within the right of way of any Public Road so as to prevent such Public Road from being accepted for public maintenance. Declarant hereby reserves the right and easement, benefiting Declarant and the Association and burdening the Property to go upon any Lot or other portion of the Property in order to remove any mailboxes or other structures or improvements constructed within the right of way of any Public Road so as to prevent such Public Road from being accepted for maintenance. Should Declarant or the Association exercise its easement rights pursuant to the terms of this Section 7.4, the Owner of the nonconforming Lot shall reimburse Declarant or the Association (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of the easement rights contained in this Section shall be subject to the discretion of the Declarant and the Association and neither Declarant, nor the Association shall have the obligation to exercise such rights.

The Association shall have the authority but not the obligation, in its sole discretion, to assess penalties against an Owner who fails to abide by the terms of this Section 7.4. The penalties authorized by this Section 7.4 as well as the expenses to be reimbursed by Declarant or the Association shall be considered Special Individual Assessments against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article 4 of this Declaration.

Section 7.6. Minor Setback Violation. In the event of the unintentional violation of any of the building setback covenants set forth above, in the amount of ten percent (10%) or less of the setback covenant in question, the Association has the right, but is not obligated, to waive in writing such violation of the setback covenants upon agreement of the Owner of the Lot upon which the violation occurs, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation. Notwithstanding the

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foregoing, so long as Declarant owns a Lot in the Subdivision, all such waivers must be consented to in writing by Declarant.

**Section 7.7. Combination or Subdivision of Lots.** Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, an Owner of a Lot may combine with a portion of or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting Parcel shall be considered as one Lot for the purposes of this Anti\* 7, but shall continue to be considered as two Lots for all other purposes (including voting and assessments). Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots Still owned by Declarant or an Approved Builder as may be needed for any reason and any Lot or Lots which result from such change shall not be subject to any additional assessment.

**Section 7.8. Utility Easements.** Declarant hereby reserves easements for the installation and maintenance of utilities (electricity, sewer, water, gas, telephone, cable T.V., etc.) and drainage facilities are reserved over the front and rear ten (10) feet of each Lot and over the adjacent five (5) feet in width along both sides of each side lot line of each Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any improvements located thereon except those improvements installed and maintained by a public authority or utility company, Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for street drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such shall not be construed to invalidate any of these covenants.

**Section 7.9. Entrance Monument.** Declarant or the Association shall erect and maintain one or more stone monuments with an entrance sign upon the Amenity Area. Entrance signs constituting the Entrance Monument shall be built to the applicable governmental standards for signs.

**Section 7.10. Fencing.** Fences and walls may be constructed of wood, brick or stone. Chain link or other metal fencing is not permitted, except that (i) 2" x 4" metal mesh may be used with split rail fencing to contain animals or children within rear or sideyards only, Perimeter fencing shall not have more than seventy percent (70%) of any of

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its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test. No fences or walls greater than four (4) feet in height are permitted.

No fence or wall facing the street shall be erected on a Lot nearer the street right of way line than the front face of the dwelling located on such Lot. In the case of a corner Lot, no sideyard fence or wall shall be erected nearer the street right of way line than the side of the dwelling located on such Lot.

Section 1.11. No signs of any kind may be displayed to the public view on any Common Area other than the Entrance Monument as set forth in Section 7. above. No signs of any kind may be displayed to the public view on any Lot with the following exceptions which may not exceed five square feet in size: (a) one sign located on a Lot advertising such Lot for sale; and (b) one sign located on a Lot used by a builder to advertise the Lot during the construction and sales period; and (c) temporary political signs located on Lots. These restrictions shall never apply to permanent Entrance Monuments, or to temporary entry signs or advertising by Declarant, or for sales signs installed by Declarant or its agents prior to the sellout of the Subdivision.

Section 7.12. Antenna; Satellite Dishes or Discs. No freestanding radio or television transmission or reception towers, antenna or satellite dishes which exceed twenty inches in diameter may be erected or maintained on any Lot. Provided, however, that (a) customary roof-mounted antennas which may extend not more than ten (10) feet above the highest roof line ridge of the house and are permitted and (b) satellite dishes or dishes which are twenty inches in diameter or less are permitted provided they are not visible from the public roads and are not constructed within the side or rear setback areas of any Lot.

Section 7.33. - Each Owner shall keep his Lot in a clean and orderly condition and shall keep the improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies.

4r 7.1 Offstreet Parking. Each Lot Owner shall provide a concrete or asphalt driveway which provides space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on the Lot. No truck or commercial vehicle in excess of one-ton load capacity or any vehicle under repair, or any trailer, wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot. No trailer, motor home, recreational vehicle, camper or boat shall be used as a residence either permanently or temporarily. All (permitted) trucks, trailers, campers, motor homes, boats and recreational

vehicles must have a current license plate affixed and must be parked in either an enclosed garage or on a concrete or asphalt pad or driveway in the back yard of any Lot or side yard or any interior (non-corner) Lot, but not inside the front setback of any Lot nor the side setback (nearest the street) of any corner Lot. All automobiles must have a current license plate affixed and may be parked in a carport, enclosed garage, or on a concrete or asphalt driveway.

Section 7.15. Sewage Every dwelling unit erected on any Lot shall be connected to a public sewage disposal system which shall be the sole means of sewage disposal for the dwelling unit.

Section 7.16. Nuisances No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or wavy of any kind shall be raised, bred, or kept on any Lot or in any residential dwelling or outbuilding except that dogs, cats, or other household pets may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. The number of household pets kept or maintained shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months in age.

Section 7.17. Maintenance All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The exterior of any building must be completed within one (1) year from the date of commencement of construction. Any damage to any street, curb or sidewalk or any part of any Common Area or any utility system caused by an Owner shall be repaired by such responsible Owner. The Owner of each Lot shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements on such Owner's Lot. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the Owner and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. Each Owner or Approved Builder shall, consistent with standard construction practices, keep all portions of the Lot free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements on a Lot, or take other measures consistent with standard construction practices necessary to keep the Lot free of such garbage, trash, or other debris. Each Owner shall be responsible for erosion control protection during any earth-disturbing operation.

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**Section 7.1\$. Public Water System** Declarant shall cause to be constructed a water system in order to provide water supplies necessary to serve the Subdivision (the "Water System" All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the Utility Easements described in Section 11, or within public road rights-of-way. Upon its completion, the Water System and all mains, pipes, equipment and other personal property which is part thereof, shall become the property of the Town of Cary. The Water System shall be the source of potable water for the Subdivision and no well may be dug or constructed on any Lot for the purpose of providing domestic water supply. No (permitted) well shall be located closer than forty (40) feet from any side lot line unless an exception is granted in writing by the affected neighboring Lot Owner(s).

### ARTICLE 5

#### INSURANCE

**Section 1. Board Hearings** The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) *Fire*- All improvements and all fixtures included in the Common Area and all personal property and supplies belonging to the Association shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, vandalism and malicious damage and all perils covered by a standard Kansas risk insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provisions and endorsements set forth in Sections 4 and 5A, the fire and casualty insurance described herein shall contain the following provisions:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.



The property and public liability insurance policy shall not contain (and the insurance shall not be placed with a company whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

(b) Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the Development, covering each member of the Board of Directors, the managing agent if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$ 1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

(c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other Insurance. Such other insurance coverages, including flood insurance and worker's compensation, as the Board of Directors shall determine from time to time desirable.

Section Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Article 5 hereof.

Section U. Special Eijkmgr =. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(a) recognition of any i t trust agreement emend into by the Association:

(b) coverage that may not be earexllled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days' prior written notice to the named insured, any Imam = Trustee and all Mortgagees; and

(c) coverage that cannot be =celled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in Ivriting that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be oiled by the Association, any Owner or any Mortgagee-

Section sAt. General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-14" or better by the current issue of Best's insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Associatiou. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 8.5. Owner's Personal The Association or the Declarant shag not be liable in any manner for the safekeeping or conditions of any personal property belonging to or used by any Owner or his family, guests or invitees. located on or used at the Parking Area, or other Common Areas. Further, the Association or the Declarant shall not be responsible or liable for any damage or loss to or of any personal property of any Owner, his family, guests or invitees located on or used at the Parking Area or other Common Areas, Each Owner shall be solely responsible for all such personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability insurance or insurance for damage to or loss of such property.

#### ARTICLE 9

#### MGM OF MORTGAGEES

Section 9.1. Apuroval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of this Declaration, have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by

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the Association (the granting of easements for utilities or other purposes pursuant to the terms of this Declaration shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner,

(c) fail to maintain fire and extended coverage if insurable improvements in the Common Area on a current replacement cost basis in an amount not less than 100% of the insurable value as required by **Article 6**

(d) use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged Common Area or other common amenities.

Section 9.2. **§. Any Mortgagee shall have the following rights, to wit:**

(a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;

(e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(f) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property; and

(g) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this Section to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Certified

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Mail, return receipt requested, addressed to the Ass; cistioo and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned <sup>by</sup> it- together with Sifictent pertinent facts to identify any Mortgage which may be held by it and which notice *shall designate* the place to which notices are to be given by the Association to such Mortgagee.

Section CO., OPIAS and Rem\* Any Mortgagee will have the right to examine the books and records of the Association during any reasonable busirieas hours,

Secti2P 9.4. ftaMmt of Taxes andikOtrance Kemiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in defauh and which may or have *become* a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making *such* payments shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE 10

#### CONDEMNATION

Section ICL. Eartial Taking Without. Direct Effect on Lots. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board of Directors in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Area. The Association, acting through the Board of Directors, shall *have the* right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. Such proceeds shall be used to restore the Common Area with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole discretion. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or imProvelnerds, fixtures or personal <sup>property</sup> thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board of Directors in its sole discretion.

**Section 113.2, Partial or full Eminent Domain.** If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Article 10.1 and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots, All compensation and damages for and on account of the taking of any one or more of the Lots, or improvements, real or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Area shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

**Section 103, Notice to Mortgagees.** A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Article 9-2 hereof.

ARTICLE 11

GENERAL PROVISIONS

**Section 11.1, Enforcement.** Declarant, being the developer of other subdivisions in the area of the Subdivision, wishes to maintain a high standard in the appearance and quality of the Subdivision. Though damages would be difficult to measure, the failure of the Owners and the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in Article 11.4, as well as the Association or any Owner or Owners, shall have the right to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Each Owner and the Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association hereby covenants and agrees that it shall exercise its power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that it shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole

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discretion to have been violated, using all remedies available to the Association at law or in equity. The Declarant hereby reserves the right and easement, benefiting Declarant and burdening the Common Area, to go upon any portion of the Common Area at any time in order to repair and maintain such Common Area where needed, in Declarant's sole discretion, to bring such Common Area within the standards required by Declarant. Should Declarant go upon any Common Area and perform any such maintenance or repairs, the Association hereby agrees to reimburse Declarant full for the cost of such maintenance or repairs upon receipt of a statement for such cost from Declarant. Declarant shall have the authority but not the obligation to exercise the easement rights set forth in this Section 11.1. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 11.3. Amendment. The covenants, conditions and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration subject to the following conditions:

(a) all additions or amendments must be *consented* to by Declarant in writing so long as Declarant is the owner of any Lot in the Development;

(b) notwithstanding anything in this Declaration to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency;

(c) no amendment shall *become effective* until the instrument evidencing such change has been filed of record.

Section 11.4. Term. The covenants, conditions and restrictions of this Declaration are to run with the land (unless otherwise specified herein) and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date this Declaration is recorded; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the then Owners of the Lots, plus Declarant, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Section 7.1 of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity. Notwithstanding any provision in this Declaration to the contrary, all powers of appointment reserved by

**BK6374P60266**

Declarant pursuant to this Declaration shall expire not later than twenty-one (20 years from the date of the death of the last to die of the now living grandchildren of George Herbert Walker Bush, past President of the United States.

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IN WITNESS WHEREOF, the Declarant has caused this 'astral tient to be executed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed, all the day and year first above written.

CRESCENT RESOURCES, INC.,  
a South Carolina Corporation

By: [Signature]  
Vice President

ATTEST:

[Signature]  
Assistant Secretary  
[CORPORATE SEAL]

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURO

This 28th day of lievenler 1994, personally came before me Gilbert D.  
who, being by me dui)! SW0111, says that he is the Vic\* !?resident of  
CRESCENT RESOURCES, INC., a South Carolina corporation, and that the seal affixed to  
the foregoing instrument is the official seal of the Corporation, and that said writing was  
signed and sealed by hicaler, in behalf of said Corporation, by its authority duly given and  
lye!site acknowledged the writing to be the net and deed of the Corporation.

[Signature]  
NOTARY PUBLIC

My Commission Expires:  
[Signature]  
NOTARY PUBLIC  
SHARRIS COUNTY, NC  
DEC 29 1994  
11-21-94



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Declaration  
TO  
DECLARATION  
FOR  
SOMERSET

ARTICLES OF INCORPORATION  
OF  
SOMERSET OWNERS ASSOCIATION, INC\_  
A NONPROFIT CORPORATION

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act" and the several amendments thereto, and to that end does hereby set forth:

1. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for SOMERSET together with any supplements or amendments thereto (the "Declaration"), which Declaration shall be recorded in the Office of the Register of deeds for Wake County, North Carolina.

2. The name of the Corporation is Somerset Owners Association, inc. (the "Association").

3. The period of duration of the Association shall be perpetual.

4. The purposes for which the Association is organized are:

(a) to manage, maintain, operate, care for and administer the Development, including, but not limited to, the Common Areas (including the Public Roads prior to their acceptance for public maintenance) as more particularly set forth in the Declaration; and

(b) to enforce the covenants, restrictions, easements, charges and liens as provided in the Declaration and to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration; and

(c) to exercise all power and privileges and perform all duties and obligations of the Association as set forth in the Declaration; and

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**EXHIBIT "A"**  
**TO**  
**DECLARATION**  
**FOR**  
**SOMERSET**

**ARTICLES OF INCORPORATION**  
**OF**  
**SOMERSET OWNERS ASSOCIATION, INC.**  
**A NONPROFIT CORPORATION**

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act," and the several amendments thereto, and to that end does hereby set forth:

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2. The name of the Corporation is Somerset Owners Association, Inc. (the "Association").

3. The period of duration of the Association shall be perpetual.

4. The purposes for which the Association is organized are:

(a) to manage, maintain, operate, care for and administer the Development, including, but <sup>not</sup> limited to, the Common Areas (including the Public Roads prior to their acceptance for public maintenance) as more particularly set forth in the Declaration; and

(b) to enforce the covenants, restrictions, easements, charges and liens as provided in the Declaration and to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration; and

(c) to exercise all power and privileges and perform all duties and obligations of the Association as set forth in the Declaration; and

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to do any and all other lawful things and such that the Association from time to time, in its discretion, may deem to be for the benefit of the Development and the owners and inhabitants thereof or advisable, proper or fit for the promotion of the peace, health, comfort, safety and general welfare of the owners and inhabitants thereof, and

(e) to exercise all powers provided in Chapter 55A of the General Statutes of North Carolina in furtherance of the above-stated purposes.

3. The Association is not organized for pecuniary gain, nor shall it have any power to issue certificates of stock or pay dividends. No part of the net assets or earnings of the Association shall inure to the benefit of any private individual, firm or corporation.

6. The Association shall have members which may be divided into such classes as shall be provided in the Bylaws. All members shall be accepted, appointed, elected or designated in the manner provided in the Bylaws.

T. The address of the initial registered office of the Association is 400 South Tryon Street, Suite 1300, Charlotte, North Carolina 28201, and the initial registered agent of the Association at such address is Leslie A. Lancaster.

8. The business and conduct of the Association shall be regulated by a Board of Directors who shall be elected in the manner and for the terms provided in the Bylaws. The number of directors constituting the initial Board of Directors shall be three, and the names and addresses of the persons who are to serve as the initial directors are:

name	Mimm
Stephen M. Schreiner	400 South Tryon St., Suite 1300 Charlotte, North Carolina 28201
Susan L. Foster	400 South Tryon St., Suite 1000 Charlotte, North Carolina 28201
Leslie A. Lancaster	400 South Tryon St., Suite 1300 Charlotte, North Carolina 28201

9. The incorporator of this Association is Brent H. Hiltrom, Jr., and his address is 2500 Charlotte Plaza, Charlotte, Mecklenburg County, North Carolina 28244.

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10. In the event of a dissolution and/or liquidation of the Association, all of the residual assets of the Association shall be distributed to such organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future Internal Revenue Code at the time of dissolution as shall, in the judgment of the directors, be deemed most likely to fulfill the purposes of the Association.

IN TESTIMONY WHEREOF, the undersigned has set his hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_[SEAL]  
Brent M. Milgrein, Jr.

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

\_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Brent M. Milgrein, Jr. personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[SEAL]

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EXHIBIT F"  
TO  
DECLARATION FOR SOMERSET  
BYLAWS  
OF  
SOMERSET OWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1.1. 19g. The name of the corporation is SOMERSET OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association."

Section 1.2. Lam. The principal office of the Association shall be located in either Wake County or Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

Section 1.3. rtgpt. The purpose for which the Association is organized is to further social activities of owners of Lots in Somerset Subdivision located in Wake County and in connection therewith to provide services to such property owners, manage and maintain the Common Area and administer and enforce all covenants and restrictions dealing with the Property located in Somerset and any other purposes allowed by law.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Somerset executed by Crescent Resources, Inc., and duly recorded in the Office of the Register of Deeds for Wake County, North Carolina, as the same may be supplemented and amended from time to time (the "Declaration").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1. &nmgl 1 . The first annual meeting of the Members shall be held on the first (1st) Tuesday in May of 1996 or on such other date as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held

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on the first (1a) Tuesday M May each year th.reafter, at the hour of 7:00 o'clock, P.M. If the day for the annual meeting of the Members is a legal holiday. the meeting **be held at** the one hour on the first day following which is not a legal holiday.

**Section 12. wcial Meetiop.** Special nieetiogs.of *the* Members may *be called* at any time by the President or by the Boatel of Dinectors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Lots.

**Section 3.3. LIWcs Mgglista** All meetings of the Members shall *be held* at such place. within Mecklenburg or Wake County, North Carolina, *as shall be determined by the Board* of Directors of the Association.

**motion** *Written notice* of each meeting of the Mcnibers shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a *copy* of such notice, postage prepaid. not less than thirty (00) days nor *more than* sixty (60) days before the date of such meeting to each Member entitled to *vote* thereat. addressed to the Member's adder last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 31 Classesof Lois and Voting Rights.** The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights.

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Oweer(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shalt be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot

(b) **Class B Lots.** Class 13 Lots shall be all Lots owned by Declarant or an Approved Builder which have not been conveyed to purchasers who are not affiliated with the Approved Builder or Declarant Declarant and Approved Builder shall be entitled to four (4) votes for each Class B Lot which each party owns.

**Section 3.6. Relinciishmerkt of Contd.** The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier

(a) when the nutraera of votes in the Class A membership held by Owners occupying full-time homes in the Subdivision equals the total number of votes

outstanding in the Class E membership, and no Additional Property remains which may be made subject to the terms of the Declaration; or

(b) upon the expiration of five (5) full years after the registration of the Declaration, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A lots at an earlier time.

Section 3.7. Voting. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one third (1/3) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.14. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.9. Action by Motets. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of no less than two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 3.10. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

ARTICLE 4

BOARD OF DIRECTORS,

Section 4.1. The business and affairs of the Association shall be managed by a Board of three directors, who need not be Members of the Association.

Section 4.7. Initial Directors. The initial directors shall be selected by the Declarant. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Wake County until such time as their successors are duly elected and qualified.

The names of the persons who shall serve on the initial Board of Directors from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Wake County until such time as their successors are duly elected and qualified are as follows:

Name	Address
Stephen M. Schreiner	400 South Tryon Street, Suite 13011 Charlotte, North Carolina 28241
Susan L. Foster	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28201
Leslie A. Lancaster	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28201

Section 4.3. Nomination. Nomination for election to the Board of Directors shall be made from the floor at a meeting of the Members. After the first election of directors, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.4. Election. Except as provided in Section 4.6, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise



under the provisions of the Declaration The persons receiving the large= number of vines shall be elected. Cumulative voting is not pertained

**Section 4.5. Term of Office.** Each director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. At the first annual meeting of the Members, the Members shall elect one (1) member of the Board of Directors for a term of three (3) years, who shall be the person receiving the largest number of votes, one (1) Member of the Board of Directors for a term of two (2) years, who shall be the person receiving the second largest number of votes, and one (1) Member of the Board of Directors for a term of one (1) year, who shall be the person receiving the third largest number of votes. At all annual elections thereafter, a director shall be elected by the Members to succeed that director whose term then expires. Nothing herein contained shall be construed to prevent the election of a director to succeed himself.

**Section 4.6. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors.

**Section 4.7. Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

#### ARTICLE 5

#### MEETINGS OF DIRECTORS

**Section 5.1. Regular Meetings.** Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 5.2. Special Meetings.** Special Meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

**Section 5.3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

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Section 1.4. Littonwl Action by Directors. Action taken by a majority of the directors without a unerring is nevertheless Board action if written consent to the action in outtaion is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action an taken.

Section 5 1 Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President *shall* serve as ChakmmL In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 5 6 liability of the Board. The members of the Board of Directors shall nee be liable to *the* Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith, The Owners shall indemnify and hold harmless each of the members of *the* Board against all contractual liability to others arising out of contracts *made* by the Board an behalf of the Association unless any such contract shall have been made in had faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are Owner(s).

#### ARTICLE 6

#### POWERS AND DUTIES OF TEE BOARD OF DIRECTORS

Section f 1. Ple I. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area *ascl* facilities and the personal conduct of the Members, their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a Member, including the rights to use the Amenity Area or other Common Areas during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

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(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties;

(f) employ attorneys to represent the Association when deemed necessary;

(g) grant easements for the installation and maintenance of sewer or water lines and other utilities or drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Property;

(h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or oddity bond as it may deem expedient;

(i) do anything necessary or desirable, including, but not limited to, establishing any rules or regulations which the Association deems necessary to carry out the purposes of the Association as set forth herein or as permitted by law;

(l) to enforce the provisions of the Declaration and any Additional or Supplementary Declaration and any rules or regulations made hereunder or thereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions, rules or regulations pursuant to the provisions of the Declaration; and

(k) to levy as \_\_\_\_\_ as more particularly set forth in the Declaration\_

Section 6.2. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members entitled to at least one-third (1/3) of the votes appurtenant to the Lots;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration:

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- (1) Fix the amount of the assessments as more particularly described in the Declaration;
- (2) Send written notice of each assessment to every Owner subject thereto before its due date; and
- (3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid (A reasonable charge may be made by the Board for the issuance of these certificates, If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);
- (e) Procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association;
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and
- (g) Cause the Common Areas to be maintained.

#### ARTICLE 7

#### OFFICERS AND THEIR DUTIES

Section 7.1. Officers. The officers of the Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 7.2. Election of Officers. The election of officers shall take place at a meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3. Term of Office. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

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Section 7.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President OF the Secretary. Such R'signation shalt take effect on the date of receipt of such notice or at any later time verified therein, and tmlss otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Vacancies. A vacancy in any office tray be filled by appointment by the Board, The officer appointed to such vacancy shall serve for the remainder of the tem of the officer he replaces.

Section 7.1. Ivlititale!Offices. The offices of Secretary and Treasurer may be held by the sante person\_ No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Sacpaa 7.4.

Section TA. ingggmAg. No officer shall receive any compensation front the Association for acting as such.

Section 7.9. Duties. The duties of the officers are as follows:

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and connal the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board one carried out shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all *checks* and promissory notes.

Vic-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

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(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association ann affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

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(d) The Treasurer shall receive and deposit in appropriate bank aCCOnIUS all monies of the Association and Audi disburse such funds as directed by resolution of the Board of Directors, shall sign all checks and promissory notes of the Association, shall keep proper books of account, shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year. and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

**ARTICLE 8**

**COMMITTEES**

The Association shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose,

**ARTICLE 9**

**BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

**ARTICLE 10**

**ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association Annual, Supplemental and Special Assessments, as defined in the Declaration. Any assessments (including but not limited to Special Individual Assessments) which are not paid when due shall be delinquent. If an assessment is not paid by its due date, as set forth in the Declaration, the assessment shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less, plus such late charge as may be established by the Board, and the Association may bring an action at law against the Member personally obligated to pay the same. The late charges, costs of

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collection and reasonable attorneys' fees related to any such action shall be added to the amount of such assessment, all in accordance with the provisions of the Declaration. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property.

ARTICLE 11

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words SOMERSET OWNERS ASSOCIATION, INC.

ARTICLE 12

AMENDMENTS

Section 12.1. These Bylaws may be amended, at a regular or special Meeting of the Members, by a vote of at least two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B membership.

Notwithstanding anything in this aWilmLlga to the contrary, the Class B Member may at its option amend these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws to comply with the requirements of the FHA, VA, Federal National Mortgage Association Or similar agency.

Section 12.2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 13

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31 day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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ARTICLE 14

INDEMNIFICATION OF DIRECTORS,  
AND OFFICERS

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which an indemnified person may be entitled under any statute, bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.