

THIS DECLARATION, made this 29th day of October, 1986, by HAYWOOD & TUCKER INVESTMENTS, a North Carolina partnership, hereinafter referred to as "Declarant";

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Cross Creek Township, Cumberland County, North Carolina, which is more particularly described on Exhibit "A", attached hereto and made a part hereof.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. Association shall mean and refer to WEXFORD OAKS HOMES, INC., its successors and assigns.

Section 2. Owner shall mean and refer to the record owner, whether one of more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be designated on plats of WEXFORD OAKS HOMES, recorded or to be recorded in the office of the Register of Deeds of Cumberland County, N.C. The Common Area shall be conveyed to the Association prior to the conveyance of the first Lot.

Section 5. (a) Lot shall mean and refer to any of the lots numbered One through Fourteen (1-14) inclusive as shown on the plat of WEXFORD OAKS HOMES and as described on Exhibit "A", as recorded as aforesaid in the Cumberland County Registry together with the structure or dwelling thereon which structure may be separately referred to as a "home" or "Unit".

Section 6. Declarant shall mean and refer to Haywood & Tucker Investments, a North Carolina partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development. The address of the corporation is Post Office Box 53982, Fayetteville, NC 28305.

Section 7. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

Section 8. Eligible Mortgage Holder or Eligible Holders is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

Section 9. Limited Common Areas and Facilities shall mean and include those common areas and facilities which are reserved for the use of certain unit or units to the exclusion of other units, as more specifically defined herein.

Section 10. Mortgagee shall mean a beneficiary under a mortgage or Deed of Trust.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association to limit the number of guests of members;

b. The right of the Association to suspend the voting rights and right to use of any recreational facilities 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 Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;

d. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

e. The common area shall not be subdivided or conveyed by the Association and the title to the common area shall be preserved to the perpetual benefit of the Association.

Section 2. Declaration of Use. Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III EASEMENTS

Section 1. Easements are reserved as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article IX of this Declaration.

Section 3. Easements are reserved over those portions of the Common Areas, Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Areas or Limited Common Areas or the air and light space above such Common Areas.

Section 4. Each lot and all common areas and facilities and limited common areas and facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage, or other common areas and facilities, whether or not the cause of any or all of those activities originates on the unit in which the work must be performed.

Section 5. Each lot, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhouse is partially or totally destroyed and then rebuilt, the owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units or Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 6. Easement over the common areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the common areas shall be granted to each owner of a lot. Further, ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the common areas and facilities; and, for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all lot owners in Wexford Oaks Homes, their guests, families, invitees and lessees, the Association, the Declarant, its successors and assigns. Declarant hereby reserves alienable easements over all streets and common areas as necessary to provide access for future development by Declarant or its successors and assigns.

Section 7. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and common area in the performance of their duties.

Section 8. In case of any emergency originating in or threatening any unit or lot or the common areas and facilities, regardless whether the unit or lot owner is present at the time of such emergency, the Board of Directors or any other persons authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and make any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

Section 9. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage of trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association, Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

a. Class "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event more than one (1) vote be cast with respect to any Lot.

b. Class "B". Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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:

(1) when the total votes outstanding in Class A membership equals the total votes outstanding in the Class B Membership, or

(2) On December 1, 1990.

#### ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

a. Annual assessments or charges, and

b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. As such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, and of the townhouses situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred and Eighty and 00/100 (\$480.00) per lot.

a. For 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 each year not more than five per cent (5%) above the maximum assessment for the previous year without a vote of the membership.

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 five per cent (5%) by 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.

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

**Section 5. Insurance.** It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

- a. **Amount and Scope of Insurance.** The Association shall obtain public liability insurance, as from time to time may be required by private institutional mortgage investors for projects similar in construction, location and use as the properties and the improvements thereon all under the terms and conditions as the responsible authority may determine. In any event, however, the Association shall procure liability coverage for an amount which shall adequately insure the Association against legal liability for property damage, bodily injuries, and death of person in connection with the operation, maintenance or use of the common areas.
- b. **Premiums.** All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its assignee, and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners equally as an additional annual assessment (herein called "insurance assessment"), which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of such liability insurance premiums.
- c. **Proceeds.** All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as Insurance Trustee, or to such Attorney at Law, or institution with trust powers as may be approved by the Board of Directors.
- d. **Policies.** All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating "A" or better by the current issue of Best Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the lot owners as their respective interest may appear.

**Section 6. Distribution of Insurance Proceeds.** Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. **Expenses of Trust.** All reasonable expenses of the insurance trustee shall be first paid or provision made therefor.
- b. **Reconstruction or Repair.** The remaining proceeds shall be used to defray the costs of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the

beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

Section 7. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. In the event any such meeting is adjourning for lack of a quorum the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The Common Area shall be conveyed to WEXFORD OAKS HOME, INC. prior to the conveyance of the first lot to an owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. 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.

Section 10. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine (9%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose in the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Working Capital Assessment. At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two (2) months estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the common area and facilities, furnishings and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.



Section 13. Responsibility of the Association for Liability Insurance and Taxes.

a. The Association shall be responsible for the provision of liability insurance, any taxes, maintenance of recreation and other facilities located on the common area, payment of assessments for public and private capital improvements made to or for the benefit of the common area located within the development.

In the event that the Association should default in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessment for private improvements to the common areas, which default shall continue for a period of six (6) months, each owner of a lot in Wexford Oaks Homes shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of lots in the Association. If such sum is not paid within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner personally obligated to pay the sums or may elect to foreclose the lien against the property of the owner.

b. The Association shall be empowered to levy an assessment against the owner of any lot within Wexford Oaks Homes for the payment of expenditures made by the Association for any of the items set forth in Section 13 (a). Any such assessment not paid by the lot owner against whom such assessment is made, shall constitute a lien on the lot of that owner.

ARTICLE VI  
FIDELITY BONDS

Section 1. General. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

Section 3. Other Requirements. Fidelity bonds required herein must meet the following requirements:

a. Fidelity bonds shall name the Association as an obligee.

b. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

d. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each Eligible Mortgage Holder.

#### ARTICLE VII ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE VIII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts of omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.



Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

#### ARTICLE IX EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance, repair or replacement is caused through the willful, negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

#### ARTICLE X USE RESTRICTIONS

Section 1. Land Use and Building Type. All lots shall be used only for residential purposes except that so long as the Declarant shall retain ownership of any lots, it may utilize any such lot or lots for sales or rentals, offices, models or other usage for the purpose of selling or renting lots within said project. When all lots have been sold, this right of commercial usage by the Declarant, shall immediately cease. Co-ownership of lots shall not be prohibited. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family townhouse dwelling not to exceed one story in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VII of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No exterior decorations shall be permitted that diminish the harmonious appearance of all the units.

Section 3. Junk Vehicles. No inoperable vehicle or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the Owner's/Tenants expenses. No automobile or vehicle may be dismantled in Wexford Oaks Homes.

Section 4. Outside Furniture. No furniture shall be permitted at the front entrance of each unit. All grills and accessories must be kept in the storage areas provided when not in use. No statues or statuary items shall be permitted in front of each unit.

Section 5. For Sale Signs Prohibited. No "For Sale" signs or any other signs shall be permitted on any lot or in the common areas and facilities, except for the initial sale of each new unit.

Section 6. Temporary Structures. . No structure of a temporary character, trailer basement, tent, shack, garage, barn or other out-building shall be used on any lot any time as a residence either temporarily or permanently. .

Section 7. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle, shall be permitted to remain on any lot, or in parking spaces, at any time, unless by consent of the Association.

Section 8. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted.

Section 9. Outside Antennas. No outside radio or television antennas or satellite dishes or receivers shall be erected on any lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 10. Window Coverings. All drapes, curtains or other similar materials hung at windows, or in any manner so as to be visible from the outside of any building erected upon any lot shall be of a white or neutral background or material or shall be lined with a white or neutral background or material in order to insure the uniform exterior appearance of the townhouse units.

Section 11. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs.

Section 12. Clothes Drying. Clothes lines or drying yards shall be so located as not to be visible from the street serving the premises.

Section 13. Garbage. Garbage receptacles shall be in complete conformity with sanitary rules and regulations. No garbage incinerators shall be permitted. No refuse piles shall be allowed to be placed or suffered to remain upon any part of Wexford Oaks Homes.

Section 14. Water Systems. No individual water supply system shall be permitted except with the permission of the Board of Directors of the Association.

Section 15. Letter and Delivery Boxes. The Declarant shall determine the location, color, size, design, lettering, and all other particulars of all mail or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniform in appearance with respect thereto.

Section 16. Commercial Vehicles. No commercial vehicles, trucks larger than pick-up trucks, construction, or like equipment or mobile or stationary trailers of any kind shall be permitted on Wexford Oaks Homes property unless first approved by the Board of Directors of the Association.

Section 17. Rental. No portion of a unit (other than the entire unit) may be rented, and no transient tenants may be accommodated therein.

#### ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Lots Subject to Declaration. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. Amendment of Declaration. This Declaration of Covenants, Conditions and Restrictions of Wexford Oaks Homes may be amended in the following manner:

An Amendment or Amendments to this Declaration of Wexford Oaks Homes may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Townhome Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration of Wexford Oaks Homes being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment or Amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the members owning Units in Wexford Oaks Homes in order for such Amendment or Amendments to become effective. During the twenty-year period beginning with the date of this Declaration, an affirmative vote of Unit Owners owning ninety percent (90%) of the undivided interest in the Common Areas and Facilities shall be required to amend this Declaration. From and after the expiration of said twenty-year period, an affirmative vote of Unit Owners owning seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities shall be required. Upon adoption such Amendment or Amendments of this Declaration of Townhomes shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of Cumberland County, North Carolina, within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording date identifying the Declaration or Wexford Oaks Homes.

Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Compliance with Fayetteville City Code. It is the intent of the Declarant to comply with those Sections of the North Carolina General Statutes 47A where applicable in those Sections as set forth in the Fayetteville City Code.

IN WITNESS WHEREOF, this Declaration has been executed on behalf of HAYWOOD & TUCKER INVESTMENTS, a general partnership, which has caused this instrument to be executed in its name, by its general partners, as of the day and year first above written.

HAYWOOD & TUCKER INVESTMENTS

By: *Perry Tucker*  
PERRY TUCKER  
General Partner

By: *P. Harlan Haywood*  
P. HARLAN HAYWOOD  
General Partner

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

I, Connie McGiffert, a Notary Public in and for the aforesaid County and State do hereby certify that PERRY TUCKER and P. HARLAN HAYWOOD, personally appeared before me this day and acknowledged that they are the general partners in HAYWOOD & TUCKER INVESTMENTS, a North Carolina partnership, and that by authority duly given and as the act of the said partnership, the foregoing instrument was signed in its name by its General Partners, this 29th day of October, 1986.

WITNESS my hand and notarial seal, this 29th day of October, 1986.

My commission expires:

9-26-88

*Connie McGiffert*  
Notary Public

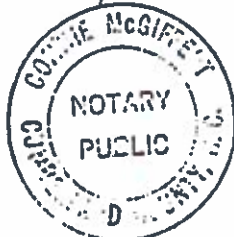


EXHIBIT "A"

BEGINNING at an iron pipe in the southern right-of-way margin of Elvira Street at its intersection with the eastern line of Fairfax Place Subdivision, as said subdivision is recorded in Plat Book 9, Page 14, Cumberland County Registry, and running thence with the southern right-of-way margin of Elvira Street South 53 degrees 0 minutes East 394.26 feet to an iron pipe, the northernmost corner of that property deeded to Kenneth H. Suggs by deed of record in Book 1005, Page 305, Cumberland County Registry; thence with the Suggs line, South 34 degrees 53 minutes West 220.37 feet to an iron pipe; thence North 53 degrees 40 minutes West 162.10 feet to an iron pipe in the eastern line of the aforementioned Fairfax Place Subdivision; thence with the eastern line of said subdivision, North 10 degrees 15 minutes West 327.24 feet to the place and point of beginning, containing 1.415 acres, more or less.

ARTICLES OF INCORPORATION  
OF  
WEXFORD OAKS HOMES, INC.  
A NON-PROFIT CORPORATION

In compliance with the requirements of Chapter 55A of the General Statutes of North Carolina, the undersigned, who is a resident of Cumberland County, North Carolina, and who is of full age does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

ARTICLE I

The name of the Corporation is hereinafter called WEXFORD OAKS HOMES, INC.

ARTICLE II

The period of duration of the Corporation shall be perpetual.

ARTICLE III

The principal and initial registered office of the Corporation is located at 711 Executive Place, Cumberland County, Fayetteville, North Carolina, 28305, and the name of the initial registered agent of the Corporation at such address is Perry A. Tucker.

ARTICLE IV

This Corporation does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, management, preservation and architectural control of that certain townhouse project known as Wexford Oaks Homes as shown and described on the plat recorded or to be recorded in the Office of the Register of Deeds of Cumberland County, North Carolina, and any additions thereto which may be brought within the jurisdiction of the Corporation; and to promote the health, safety and welfare of the residents of Wexford Oaks Homes and any additions thereto as may hereafter be brought within the jurisdiction of this Corporation, and for these purposes:

- A. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", applicable to all of the property herein described which is recorded in the office of the Register of Deeds of Cumberland County, North Carolina, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- B. To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and



Perry A. Tucker  
413 Wayberry Drive  
Fayetteville, NC 28303

Wanda W. Haywood  
2301 Furlong Place  
Fayetteville, NC 28301

P. Harlan Haywood  
2301 Furlong Place  
Fayetteville, NC 28302

#### ARTICLE VIII

Dissolution. The Corporation may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

#### ARTICLE IX

Incorporator. The name and address of the incorporator of this Corporation is:

Richard M. Wiggins  
500 N. McPherson Church Road  
Fayetteville, North Carolina 28302

IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of North Carolina, I, the undersigned, being the incorporator of this Corporation, have executed these Articles of Incorporation, this the 29<sup>th</sup> day of October, 1986.

  
\_\_\_\_\_  
RICHARD M. WIGGINS (SEAL)

other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;

- C. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;
- D. To borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- E. To dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members;
- F. To participate in mergers and consolidations with other non-profit corporations organized for the same purposes;
- G. To have and to exercise any and all powers, rights and privileges with a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

#### ARTICLE V

Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by the Declaration to assessment by the Corporation, including contract sellers, shall be a member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject by the Declaration to assessment by the Corporation.

#### ARTICLE VI

Voting Rights. The Corporation shall have two (2) classes of voting membership as outlined in the Declaration of Covenants, Conditions and Restrictions of Wexford Oaks Homes.

#### ARTICLE VII

Board of Directors. The affairs of the Corporation shall be managed by a Board of Directors, consisting of three (3) Directors, at least two (2) of whom shall be members of the Corporation. The Directors shall be elected by the members as provided in the By-Laws of the Corporation. Until the first annual meeting of the members, or until their successors are otherwise selected and qualified, there shall be three (3) Directors who are not required to be members and whose names and addresses are as follows:

BY-LAWS  
OF  
WEXFORD OAKS HOMES, INC.

(A Non-Profit Corporation)

ARTICLE I

GENERAL

Section 1. The Name. The name of the corporation shall be WEXFORD OAKS HOMES, INC.

Section 2. The Principal Office. The principal office of the corporation shall be 711 Executive Place, Fayetteville, Cumberland County, North Carolina 28305 or at such other place as may be subsequently designated by the Board of Directors.

Section 3. Definition. As used herein, the term "corporation" may be used interchangeably with and shall be the equivalent to "Association" as defined in the Declaration of Covenants, Conditions and Restrictions of Wexford Oaks Homes, Inc., (herein called the "Declaration") shall be applicable herein, unless otherwise defined herein.

ARTICLE II

MEMBERSHIP

Section 1. Definition: Each owner shall be a member of the corporation, and membership in the corporation shall be limited to owners of lots in Wexford Oaks Homes.

Section 2. Transfer of Membership. Membership in the corporation may be transferred only as an incident to the transfer of the transferor's lot in Wexford Oaks Homes.

ARTICLE III

MEETINGS OF MEMBERSHIP

Section 1. Place. All meetings of the corporate membership shall be held in Fayetteville, North Carolina, or at such other place as may be stated in the notice.

Section 2. Annual Meeting.

a. The annual meeting of members shall be held at the principal office of the corporation, or at such other place as the Board of Directors shall designate in the Notice of the meeting, in each year commencing in 1987, provided, however, that the initial annual membership meeting will not be held until the earlier of (1) the sale by Declarant, as defined in the Declaration, of all townhouse lots, or (2) notice by the Declarant. If neither (1) nor (2) has occurred by the first Friday in February, 1987, the first Board of Directors (the "Board") will notify all members that such initial annual meeting has been postponed, and that it will be re-scheduled at a later date. If same be rescheduled, the first directors and the officers will hold office until the initial annual meeting.

b. Regular annual meetings subsequent to 1987 shall be held on the first Saturday in April in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, unless otherwise determined by the Board.

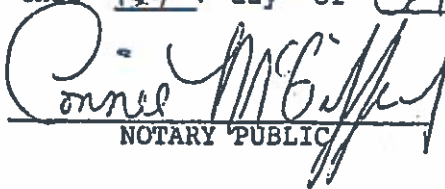
c. All annual meetings shall be held at such hour as is determined by the Board.

NORTH CAROLINA

CUMBERLAND COUNTY

This is to certify that on the 29<sup>th</sup> day of October, 1986, before me, a Notary Public, personally appeared RICHARD M. WIGGINS, who, I am satisfied, is the person named in and who executed the foregoing Articles of Incorporation, and I have first made known to him that he signed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 29<sup>th</sup> day of October, 1986.

  
NOTARY PUBLIC

My Commission Expires:

9-20-88

dispensed with if all members who would have been entitled to vote upon the action of such meeting if such meeting were held shall consent in writing to such action being taken.

Section 9. Order of Business. The order of business at annual members' meetings and as far as practical at other members' meetings, will be:

- a. Roll call and certification of proxies;
- b. Proof of notice of meeting or waiver of notice;
- c. Reading of minutes of prior meeting;
- d. Officers' report;
- e. Committee reports;
- f. Approval of budget;
- g. Election of directors;
- h. Unfinished business;
- i. New business;
- j. Adjournment.

Except as herein provided, Robert's Rules of Order shall be applicable to the conduct of all meetings.

#### ARTICLE IV

##### BOARD OF DIRECTORS

Section 1. Number and Term: The number of directors which shall constitute the whole Board of Directors (the "Board") shall be three (3). Until succeeded by directors elected at the first annual meeting of members, directors need not be members; thereafter, at least two (2) directors shall be members. The directors shall be elected to serve up to four (4) years, and they shall serve until their successors are elected and shall qualify.

Section 2. Vacancy and Replacement. If the office of any director becomes vacant by reason of transfer of ownership, death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 3. Removal. Directors may be removed with or without cause, by an affirmative vote of a majority of the total membership.

Section 4. First Board of Directors. The first Board shall consist of Perry A. Tucker, P. Harlan Haywood and Wanda W. Haywood, who shall hold office and exercise all powers of the Board until the initial annual membership meeting, anything herein to the contrary notwithstanding; provided, any or all of said directors shall be subject to replacement in the event of resignation or death as above provided.

Section 5. Powers and Duties. The property and business of the corporation shall be managed by the Board, which may exercise all corporate powers not specifically prohibited by the statute, the Certificate of Incorporation or the Declaration. The powers of the Board shall specifically include, but not be limited to the following:

d. At the annual meeting, the members shall elect the new members of the Board of Directors and transact such other business as may properly come before the meeting.

e. Written notices of the annual meeting shall be served upon or mailed to each member entitled to vote thereafter at such address as appears on the books of the corporation, at least ten (10) but not more than fifty (50) days prior to the meeting. Each member shall notify the Secretary of any address change, and the giving of said notice shall be in all respects sufficient if sent to the address of the member which is then on file with the Secretary.

Section 3. Membership List: At least ten (10) but not more than fifty (50) days before every election of directors, a complete list of members entitled to vote at said election, with residence of each, shall be prepared by the Secretary. Such list shall be produced and kept for said ten (10) days prior to and throughout the election at the office of the corporation, and shall be open to examination by any member throughout such time.

Section 4. Special Meetings:

a. Special Meetings of the members, for any purpose or purposes not prescribed by statute, the Certificate of Incorporation, or these By-Laws, may be called by the Board or at the request, in writing, of one-third of the members. Such request shall state the purpose or purposes of the proposed meeting.

b. Written notice of a Special Meeting of members, stating the time, place and object thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the corporation, at least ten (10) days before such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, postage prepaid, addressed to the member at such address as appears on the records of members of the Association.

c. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 5. Quorum. A quorum will be required as outlined in Article V, Section 7 of the Wexford Oaks Declaration of Covenants.

Section 6. Vote Required to Transact Business. When a quorum is present at any meeting, a majority of the votes cast, in person or represented by written proxy filed with the Secretary in advance of the meeting, shall decide any question brought before the meeting, unless the question is one upon which, by express provision of the statutes, the Declaration or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. There shall be no cumulative voting.

Section 7. Right to Vote. Each owner of a Class A membership in good standing shall be entitled to one (1) vote. The vote of the Class B membership shall be as prescribed in the Declaration. At any meeting of the members, every member having the right to vote shall be entitled to vote in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof. If more than one (1) person or entity own a lot, they shall file a certificate with the Secretary naming the person authorized to cast votes for said lot. If same is not on file the vote of any co-owner present who is acceptable to other co-owners of that lot present shall be accepted as the vote of all co-owners. All legal entity which is an owner shall have the right to membership in the corporation.

Section 8. Waiver and Consent. Whenever the vote of members at a meeting is required or permitted by any provision of the statutes, the Declaration, or these By-Laws to be taken in connection with any action of the corporation, the meeting and vote of members may be



- a. To make and collect regular and special assessments and establish the time within which payment of same are due.
- b. To use and expend the assessments collected to maintain, care for and preserve the properties and common areas, except those portions thereof which are required to be maintained, cared for and preserved by the owners.
- c. To purchase the necessary equipment and tools required in the maintenance, care and preservation referred to above.
- d. To enter into and upon the lots when necessary and at as little inconveniencce to the owner as possible in connection with such maintenance, care and preservation.
- e. To insure and keep insured the properties and common areas and facilities of the project in the manner set forth in the Declaration against loss from fire and/or other casualty, and the lot owners against public liability, and to purchase such other insurance as the Board may deem advisable, including insurance against Directors' liability.
- f. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from owners for violations of these By-Laws and the terms and conditions of the Declaration.
- g. To employ and compensate such personnel companies as may be required for the maintenance and preservation of the property, to include general management, collection and disbursement activities.
- h. To make appropriate changes in the Rules and Regulations in accordance with the Declaration for the occupancy of the lots as may be deemed necessary. Changes not approved at the next meeting of the membership by a majority of the votes cast shall be invalid from the date of such change.
- i. To designate, as the Board deems appropriate, assigned parking spaces for each lot, visitors, service vehicles and other vehicles.
- j. To adopt Rules and Regulations pursuant to Article IX of the By-Laws.
- k. If any lessee, renter or guest fails to comply with the terms of the Declaration, then to terminate any written or oral lease or rental agreement; and to remove from a lot, such lessee, renter or guest.
- l. To propose and adopt an annual budget for the property.

Section 6. Liability. The directors shall not be liable to the owners except for their own individual willful misconduct, bad faith, or gross negligence.

Section 7. Compensation. Neither directors nor officers shall receive compensation for their services as such, provided that the corporation may budget such sums as it may deem appropriate for direct reimbursement of actual expenses incurred by the directors or officers in behalf of the corporation.

Section 8. Meetings.

a. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board shall be held at the same place as the general members' meeting, and immediately before or after the adjournment of same.

b. Special meetings shall be held whenever called by the direction of the President or a majority of the Board. The Secretary shall give notice of each special meeting either personally, by mail or telegram, at least three (3) days before the date of such meeting, but the directors may, in writing, waive notice of the calling of the meeting, before or after such meeting.

c. A majority of the Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at the meeting, the directors then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

d. Action taken by a majority of the Directors without a meeting shall constitute Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 9. Order of Business. The order of business at all meetings of the Board shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting or waiver of notice;
- c. Reading of Minutes of last meeting;
- d. Consideration of communications;
- e. Elections of necessary directors and officers;
- f. Reports of officers and employees;
- g. Reports of committees;
- h. Unfinished business;
- i. Original resolutions and new business;
- j. Adjournment.

Section 10. Annual Statement. The Board shall present, no less often than at the annual meeting, a full and clear statement of the business and condition of the corporation, including a report of the operating expenses of the corporation and the assessments paid by each member.

## ARTICLE V

### OFFICERS

Section 1. Executive Officers: The executive officers of the corporation shall be a President, Secretary, and Vice President and Treasurer; all of whom shall be elected annually by the Board from the Membership. If the Board so determines, there may be more than one (1) Vice President. Any or all officers may also be directors of the corporation.

Section 2. Subordinate Officers. The Board may appoint such other officers and agents from the membership as they may deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by said Board.

Section 3. Tenure of Officers: Removal. All officers shall be subject to removal, with or without cause, at any time by action of

the Board. The Board may delegate powers of removal of subordinate officers and agents to any officer.

#### Section 4. The President.

a. The President shall preside at all meetings of the members and directors; he shall have general and active management of the business of the corporation; he shall see that all orders and resolutions of the Board are carried into effect; he shall execute bonds, mortgages, deeds of trust and other contracts requiring a seal, under the seal of the corporation.

b. He shall have general superintendence and direction of all the other officers of the corporation, and shall see that their duties are performed properly.

c. He shall submit a report of the operations of the corporation for the fiscal year to the directors whenever called for by them, and to the members at the annual meeting, and from time to time shall report to the Board all matters within his knowledge which the interest of the corporation may require to be brought to their notice.

d. He shall be an ex-officio member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

#### Section 5. The Secretary.

a. The Secretary shall keep the minutes of the members' and of the Board's meetings in one or more books provided for that purpose.

b. He shall see that all notices are fully given in accordance with the provisions of these By-Laws or as required by law.

c. He shall be custodian of the corporate records and of the seal of the corporation and shall see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized with the provisions of these By-Laws.

d. He shall keep a register of the post office address of each member, which shall be furnished to the Secretary by each member.

e. In general, he shall perform all duties incidental to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 6. The Vice President. The Vice President shall be vested with all the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board.

#### Section 7. The Treasurer.

a. He shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board.

b. He shall disburse the funds of the corporation as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the corporation. Such records shall be open to inspection by members at reasonable times.

c. He may be required to give the corporation, at the corporation's cost, a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration to the corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation.

d. He shall maintain a register for the names of any mortgage holders or lien holders on units who have requested in writing that they be registered and to whom the corporation will give notice of default in case of non-payment of assessments. No responsibility of the corporation is assumed with respect to said register except that it will give notice of default of any owner in his obligations to the corporation to any registered mortgagee or lienor therein, if so requested by said mortgagee or lienor.

e. With the approval of the Board, he shall be authorized to delegate all or part of his responsibilities to competent accounting, collection or management personnel, pursuant to written definition of the responsibilities delegated to, and the condition of performance imposed upon, such personnel; but, in such event, the Treasurer shall retain supervisory responsibilities.

Section 8. Vacancies. If the office of any director or officer becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, by a majority vote of the remaining directors provided for in these By-Laws, may choose a successor or successors who shall hold office for the unexpired term. If the number of directors falls below three (3), a special members' meeting shall be called for the purpose of filling such vacancies in the Board of Directors.

Section 9. Resignations. Any director or officer may resign his office at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Board of Directors, unless some later time be fixed in the resignation, and then from that date. The acceptance of a resignation by the Board shall not be required to make it effective.

## ARTICLE VI

### NOTICES

Section 1. Definition. Whenever under the provisions of the statutes, the Declaration, the Certificate of Incorporation, or these By-Laws, notice is required to be given to any director or member, it shall not be construed to mean personal notice, but such notice may be given in writing by mail, by depositing the same in a post office or letter box in a postpaid, sealed envelope, addressed as appears on the books of the corporation.

Section 2. Service of Notice - Waiver. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, the Certificate of Incorporation, or these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

Section 3. Address. The address for notice of the corporation shall be that of the Registered Agent for service of process on the corporation.

## ARTICLE VII

### FINANCES

Section 1. Fiscal Year. The fiscal year shall be the calendar year.

**Section 2. Checks.** All checks or demands for money and notes of the corporation in an amount of \$2,000.00 or less, shall be signed by anyone of the following officers: President, Secretary, Vice President or Treasurer, or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate. Amounts in excess of \$2,000.00 shall require the signature of two (2) such persons.

**Section 3. Determination of Assessments.**

a. The Board shall determine from time to time the sum or sums necessary and adequate for the common expense of the property. At the annual meeting of the corporation, such budget shall be submitted to the members for approval. As approved, the budget shall constitute the basis for all regular assessments for common expenses against lot owners, which assessments shall be due and payable periodically as determined by the Board. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the properties and the common areas and facilities, costs of carrying out the powers and duties of the corporation, all insurance premiums and expenses relating thereto, and any other expenses designated as common expense from time to time by the Board of Directors of the corporation.

b. The Board is specifically empowered on behalf of the corporation to make and collect assessments and to maintain, repair and replace the properties and common areas and facilities of the properties. Funds for the payment of common expenses shall be assessed against the lot owners in the proportions or percentages of sharing common expenses provided in the Declaration. Assessments shall be payable periodically as determined by the Board.

c. Special assessments for common expenses not adequately funded through the regular assessments may be required by the Board and shall be levied and paid in the same manner as hereinbefore provided for regular assessments. Notwithstanding anything in these By-Laws or the Declaration which authorize assessments and expenditures, no special assessment exceeding \$75.00 per lot per annum or expenditure for the improvement of the common areas and facilities exceeding \$1,000.00 per annum for all lots shall be made without the approval of a majority vote of the membership, except for the repair of the properties and the common areas and facilities due to damage and destruction, which repair shall occur as provided in the Declaration.

d. Special assessments against any owner for (1) any repair, maintenance or replacement undertaken in behalf of the owner pursuant to Article IV of the Declaration, (2) any violation, as set forth in Article IV, Section 5k of the By-Laws or (3) any other valid purpose authorized by the Declaration, shall be levied at such times as is determined by the Board.

e. When the Board has determined the amount of any assessment, the Treasurer of the corporation (or the personnel to whom such authority has been delegated) shall mail or present a statement of the assessment to each of the assessed owners. All assessments shall be payable to the corporation, and upon request the Treasurer or his designated agent shall give a receipt for each payment made.

f. The Board may enter into a management contract with third parties to whom the Board may delegate the power to levy and collect assessments approved by the Board or required by the Declaration.

g. All assessments not paid when due shall bear interest at such rate as is determined by the Board of Directors, not to exceed the maximum permissible rate allowed by law.

**Section 4. Excess of Assessments.** In any year in which there is an excess of assessments received over amounts actually used or payable for the purposes described in these By-Laws and in the

Declaration, such excess shall, unless otherwise determined by the Board of Directors of the Association, be deposited in a capital reserve account for use in replacement, repair or maintenance of the properties and common areas and facilities of the Association.

Section 5. Non-Profit Corporation. The seal of the corporation shall have inscribed thereon the name of the corporation, the year of its organization, and the words "Non-Profit". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

## ARTICLE VIII

### DEFAULT

Section 1. Enforcement of Lien for Assessments. In the event an owner does not pay any sums, charges, or assessments required to be paid to the corporation by the due date, the corporation, acting on its behalf or through its Board, may enforce its lien for assessments, or take such other action to recover the sums, charges of assessments to which it is entitled, in accordance with the Declaration and the statutes made and provided for both.

Section 2. Governmental Liens and Assessments. In the event that an owner fails to pay any tax or assessment lawfully assessed by any governmental subdivision within which the property is situated, by the date such tax or assessment is due, the Board may pay the same from the funds of the corporation and specially assess such owner for the amount paid.

Section 3. Foreclosure. If the corporation becomes the owner of a lot by reason of foreclosure, it shall offer said lot for sale, and, at such time as a sale is consummated, it shall deduct from the proceeds of said sale all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any and all expenses incurred in the resale of the lot, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for repairing and refurbishing of the lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of subject lot.

Section 4. Other Remedies. In the event of violation of the provisions of the Declaration as the same are defined in the Declaration, for thirty (30) days after notice from the Association to the lot owners to correct said violation, the corporation, on its behalf or by and through its Board of Directors, may bring appropriate action to enjoin such violation or may enforce the provisions of said Declaration, or may sue for damages, or take such other courses of action, or other legal remedy as it or they may deem appropriate.

Section 5. Legal Costs. In the event any legal action is brought against any owner and results in a judgment for the corporation, the owner shall pay the corporation's reasonable attorney's fees, costs of collection, and court costs.

Section 6. Intent. Each owner, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the availability of the other equally adequate legal procedures. It is the full intent of all owners of lots to give to the corporation a method and procedure which will enable it at all times to operate on a business-like basis, to collect the monies due and owing it from the owners of lots, and to preserve each lot owner's right to enjoy his lot, free from unreasonable restraint and nuisance.



## ARTICLE IX

### RULES AND REGULATIONS

In addition to the other provisions of these By-Laws, any Rules and Regulations (adopted by the Board), together with any subsequent changes shall govern, to the extent not inconsistent with these By-Laws and the Declaration, the use of the lots located in the property and the conduct of all owners, residents and guests, such Rules and Regulations shall be in effect until the first elected Board of Directors Meeting, at which time they shall be subject to such changes as may be deemed appropriate. Any further modifications in the Rules and Regulations may be made by the Board of Directors in accordance with Article IV, Section 5, of the By-Laws.

## ARTICLE X

### JOINT OWNERSHIP

Membership may be held in the name of more than one owner. In the event ownership is in more than one person, all of the joint owners shall be entitled collectively to only one (1) voice or ballot in the management of the affairs of the corporation, and the vote may not be divided between plural owners. The manner of determining who shall cast such vote shall be as set forth in Article III, Section 7.

## ARTICLE XI

### INDEMNIFICATION

The corporation may indemnify any person made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of his being or having been a director or officer of the corporation, against the reasonable expenses including attorney's fees actually and necessarily incurred by him in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence of misconduct in the performance of his duty to the corporation.

## ARTICLE XII

### AMENDMENT

These By-Laws may only be altered, amended or added to at any duly called meeting of the members; provided (1) that the notice of the meeting shall contain a full statement of the proposed amendment; (2) that the quorum requirement for such purposes shall be a majority of all the then members, in person or by proxy; (3) that there be an affirmative vote of members represented at such quorum; and (4) that there is or has been an affirmative vote of the Board of Directors. Article III, Section 2a may not be amended without express approval of Declarant, as defined in the Declaration. No amendment to these By-Laws shall be passed which would operate to impair or prejudice the rights and/or liabilities of any mortgagee, and no amendment shall become operative unless set forth in an amended Declaration and duly recorded. All lot owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an amended Declaration, duly recorded in the office of the Register of Deeds of Cumberland County, North Carolina.

## ARTICLE XIII

### CONSTRUCTION

Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so requires.

Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall nevertheless be and remain in full force and effect.

The foregoing were adopted as the By-LAWS OF WEXFORD OAKS HOMES, INC., at the meeting of its Board of Directors held on the 27<sup>th</sup> day of Oct., 1986.

  
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Secretary of Meeting of  
Board of Directors  
WEXFORD OAKS HOMES, INC.