

Amendment
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6-4-87

Prepared by mail to:
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NORTH CAROLINA
DURHAM COUNTY

Declaration
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ASHLEY FOREST SUBDIVISION

THIS DECLARATION, made this 1st day of MAY, 1987, by THE NEW FORTIS CORPORATION, and ARAPPCO, INC., hereinafter referred to collectively as the "Declarant";

WITNESSETH:

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WHEREAS, the Declarant is the owner of certain property in Oak Grove Township, Durham County, North Carolina, which is more particularly described as:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

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

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ARTICLE I

DEFINITIONS

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Section 1. "Association" shall mean and refer to Ashley Forest Association of Durham, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "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 3. "Common area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, including private streets, "open space", greenways and recreation areas.

Section 4. "Private streets" shall mean those portions of the common area which are designated as street area, whether or not constructed or opened, but which are

not dedicated as a public street and are not publicly maintained.

Section 5. "Limited common area" shall mean those portions of the common area, if any, that serve only a limited number of lots and which may include, but specifically is not limited to parking buildings or areas serving only specified lots, and such other similar areas as may be designated by the Association. Limited common areas shall be maintained at the expense of the owners of lots served thereby and not at the expense of the Association.

Section 6. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the properties on which such plot appears (provided said map has been approved by Declarant), with the exception of the common area and limited common area.

Section 7. "Detached House Lot" shall mean and refer to any lot as shown on any recorded plat of the Ashley Forest Subdivision or any portion or phase thereof.

Section 8. "Member" shall mean and refer to every person who holds membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons 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 10. "Declarant" shall mean and refer collectively to The New Fortis Corporation, a North Carolina corporation, its successors and assigns, and Arappco, Inc., a North Carolina corporation, its successors and assigns, to whom the rights of Declarant are expressly transferred, or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust or one otherwise denominated a "Declarant" hereby.

Section 11. "Amenities" shall mean the facilities constructed, erected, or installed on the common area for the use, benefit and enjoyment of members.

Section 12. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 1. Annexation By Members. Except as provided in Section 2 of this Article, additional lands may be added and annexed to the properties only if both

two-thirds (2/3) of all of the votes entitled to be cast, in the aggregate, by Class A members and also two-thirds (2/3) of all the votes entitled to be cast by Class B members, if any, are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all members of the Association, setting forth the time, place and purpose of the meeting, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

For the purposes of such meeting, the presence thereof of members or proxies entitled to cast sixty percent (60%) of the votes of the Class A members and sixty percent (60%) of the votes of the Class B members, if any, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and the majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority, either of the Class A or of the Class B votes, or both, required for approval of the annexation, and it appears that the required two-thirds (2/3) majority of either class may be achieved if the members not present or voting by proxy assent to the annexation, then and in that event, the members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within 120 days following the date of the meeting at which the vote was taken. Each member so assenting or dissenting shall be deemed to have cast, respectively, all of the votes to which he is entitled under Article IV of this Declaration either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of all votes entitled to be cast by the Class A members, in the aggregate, and by the Class B members, the annexation shall stand approved.

Section 2. Annexation By Declarant. The Declarant may annex additional lands to the properties in the following manner:

(a) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop additional lands within the boundaries shown on the general plan of this development heretofore submitted to the County of Durham, such additional lands may be annexed to said properties without the assent of the Class A members. Detailed plans for the development of additional lands may be

submitted to the County of Durham prior to such development if such submission is required by ordinances of the County of Durham.

(b) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop, from time to time, an additional tract or additional tracts of land, other than as set forth in subsection (a) above, consisting of any property outside of the boundaries of the General Plan of Ashley Forest Subdivision, heretofore submitted to the County of Durham such additional lands shall be annexed to said Properties only with the assent of two-third's members Class A and Class B members, provided, however, that such annexation shall be approved by the County of Durham if such approval is required by ordinances of the County of Durham and, provided further, that the development of the additional lands described in this Section shall include amenities, equivalent in replacement cost (computed at the time that construction of the additional amenities is commenced and on the basis of the number of dwelling units being served), to those constructed on the properties.

(c) The Declarant may annex to the properties the additional lands described in subsections (a) and (b) of this Section 2 by recording in the Durham County Registry a declaration of annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions therein. The additional land shall be deemed annexed to the properties on the date of recordation of the declaration of annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except as required in Article XIII, Section 7 and by the County of Durham as provided in subsections (a) and (b) of this Article.

(d) Subsequent to recordation of any subsequent declaration of annexation by the Declarant the Declarant shall deliver to the Association one or more deeds conveying any common area or limited common area within the lands annexed as such common area or limited common area is developed. It is understood, however, that the amenities which have been planned for inclusion within the general plan of this development referred to in this Section 2 are intended for the use of the occupants of one hundred ninety nine (199) dwellings. Notwithstanding any provision in this instrument to the contrary, if less than one hundred (100) dwelling units are constructed within the boundaries shown on the general plan of this development referred to in subsection (a) of this Section 2, no additional amenities shall be required on account of the annexation of additional properties outside the boundaries shown on

the general plan of this development until the number of dwelling units within and outside said boundaries exceeds two hundred ninety nine (299).

ARTICLE III

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; no owner shall have more than one membership in each Association and there shall be only one vote per lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

In addition, there shall be a Class C membership as defined in Article IV>

ARTICLE IV

VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership and one class of non-voting membership:

(a) Class A. Class A members shall be all owners, other than Declarant; however, Declarant shall be a Class A member to the extent provided in (b) hereinafter. Class A members 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 the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot in which it holds a fee or undivided fee interest, provided that 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 equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided

in Article II of this Declaration, or

(2) On January 1, 1992.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article V, Section 1(c).

Section 3. Class C members shall be those owners of property within the Stirrup Creek Subdivision who have been accepted for membership by the Association. Class C members shall be non-voting members. Class C membership shall terminate upon the sale of the member's property within the Stirrup Creek Subdivision and shall not be transferred to a subsequent property owner. Notwithstanding anything to the contrary, the membership of a Class C member shall also terminate upon the failure to pay any assessment within thirty (30) days of its due date. Class C members' rights shall be limited to the use of the pool, and any related facility.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member 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 assessed lot, subject to each of the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage the common area, or any portion thereof, except private streets, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that the execution of such mortgage shall require the same approval of the membership which is required for special assessments for capital improvements as set forth in Article VI, Section 4 of this Declaration.

(c) The right of the Association to suspend the voting rights and right to the use of any recreational facilities by a member or any person to whom he has delegated his right of enjoyment 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;

(d) The right of the Association to dedicate or transfer all or any part of the common area or limited 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; provided, however, that no conveyance of the limited common area to any public agency, authority or utility shall deprive any member, otherwise entitled, of the full use thereof. No such dedication or transfer shall be effective unless approved by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance of the vote. The instrument affecting such dedication, transfer or conveyance shall be sufficient if it is executed by appropriate offices of the Association, and contains a recital of the approval of the members;

(e) The right of members to the exclusive use of parking spaces as provided in this Article;

(f) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article IX.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers who reside on the property, subject to such general regulations as may be established from time to time by the Association. A Class C member may delegate his right to the use of the pool and any related facility only to the members of his immediate family.

Section 3. Title to the Common Area and Limited Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility, antenna and drainage easements and easements to governmental authorities. Similarly, Declarant will convey to the Association common areas and limited common areas which are parts of this development as those portions are annexed in the future.

Section 4. Parking Rights. The Association may regulate the parking of boats, trailers, and other such items on the common area (including the provision of special facilities for which a reasonable charge may be made). No boats, trailers, motorcycles or any vehicles over three-fourths (3/4) ton weight shall be parked within

the right of way of any public or private street in or adjacent to this development.

Section 5. Antennas and Cablevision. The Association may provide cablevision or central television antennas provided that the cost shall be borne by those who subscribe to the service and not be included in annual or special assessments. The Association may regulate or prohibit the erection of antennas on individual lots.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties and for each Class C member, hereby covenants, and every other owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, and any Class C member is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest, costs, and attorney fees shall also be the personal obligation of the person who was the owner of the lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common area other than limited common area shall be shared equally by the owners of each lot. All assessments which are for the maintenance or improvements of limited common areas shall be shared equally by the owners of lots served by such limited common area.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the properties; enforcing these covenants and the rules of the Association; improving and maintaining the properties and the homes situated thereon; providing the services and facilities for purposes of and related to the use and enjoyment of the common area and facilities, including but not limited to use, enjoyment and maintenance of the pool facility.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. To and including December 31, 1987, the maximum annual assessment shall not be in excess of Three Hundred (\$300.00) Dollars per lot, the exact amount of which shall be determined from time to time as provided in subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1987, the maximum annual assessment may be increased effective January 1 of each year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and Selected Areas for Urban Wage Earners and Clerical Workers, All Items Most Recent Index and Percentage Changes from Selected Dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1. However, in no event shall such increase be greater than twelve percent (12%) in any one year.

(c) Increase by Members. From and after December 31, 1987, the annual assessment may be increased by a percentage greater than that established by the Consumer Price Index formula by an affirmative 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 such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

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 that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the

necessary 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, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and members and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein may be collected in equal installments or on an annual basis and the payment of such shall commence as to each lot on the first day of the month following the recordation of the Declaration for each Section. 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. The Association, upon demand at any time, shall furnish a certificate in writing 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 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the

due date, the same shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either event, interest and costs of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such lot. 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.

10. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Working Capital Fund. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of its existence, the Association shall establish a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

ARTICLE VII

ARCHITECTURAL CONTROL AND INSPECTION

After the issuance of a Certificate of Occupancy by the appropriate municipality, no subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements, including, but not limited to, residences, outbuildings, fences, walls, signs, antennas,

clotheslines and other structures, except by the Declarant, shall be undertaken upon the properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, color, and location of the proposed improvements without the prior review and express written approval of the Board of Directors of the Association, or by an architectural committee comprised of three (3) or more representatives appointed by the Board.

In the event that the Association, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Association if they contain erroneous data or fail to present adequate information upon which the Association can arrive at a decision.

The Association shall have the right, at its election to enter upon any of the properties during site preparation or construction, erection or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VIII

EXTERIOR MAINTENANCE

The maintenance of lots and improvements constructed thereon shall be the duty of the owners of such lots or any association required to maintain such lots (except where specifically provided otherwise) and shall not normally be interfered with by the Association or any person. IF, however, in the opinion of the Association, any owner or any association required to maintain such lots shall fail to maintain any lot owned by him or it in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the opinion of the Association, the Association in its discretion, by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice to the owner or any association required to maintain such lots, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the lot as the removal of trash, cutting of grass, pruning of shrubbery, seeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing.

The cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become a part of such other assessment to which such lot is subject.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the common area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each lot, the limited and area, common area and facilities shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

(a) No immoral, improper, offensive or unlawful use shall be made of the properties, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the property, shall be complied with, by and at the sole expense of the owner or the Association, whichever shall have the obligation to maintain or repair such portion of the property.

(b) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the common area and facilities except at the direction of or with the express written consent of the Declarant or the Association.

(c) No power boats shall be used on any lakes located within the Properties.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the property, nor shall anything be done which may be or may become a nuisance or annoyance to any residence within the property.

ARTICLE X

EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the properties, including lots, common area and limited common area shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers storm drainage facilities, gas lines, telephone and electric power lines, television

antenna lines, and other public utilities as shall be established prior to subjecting the properties to this Declaration by the Declarant or its predecessors in title; and the Association shall have the power and authority to grant and to establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the properties.

Section 2. Encroachments. All lots, the limited common area and the common area shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts exterior storage rooms, bay windows, steps and walls. If any encroachment shall occur subsequent to subjecting the properties to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 3. Private Streets and Limited Common Areas. All private streets and limited common areas shall be subject to an easement in favor of every lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each lot, whereby the owner of such lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to every easement of whatever nature to which any of the common area may be subjected.

ARTICLE XI

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Amendments. The prior written approval of each institutional holder of a first deed of trust on lots in the properties will be required for any material amendment to the Declaration or to the Bylaws of the Association.

Section 2. Professional Management. Professional management of the Association is selected by Declarant for the period during which Declarant maintains voting control of the Association. Following the transfer of voting control to the owners

pursuant to Article IV, professional management of the Association shall be continued by the owners. Self management of the Association by the owners is allowed only with the prior written consent of each institutional holder of a first deed of trust on any lot or property within Ashley Forest Subdivision.

Section 3. Inspection and Notice. Upon written request, any institutional holder of a first lien on a lot will be entitled to:

- (a) inspect the books and records of the Association during normal business hours;
- (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year; and
- (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings;
- (d) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association.
- (e) written notice of any proposed action that requires the consent of a specified percentage of mortgage holders;
- (f) written notice of any 60-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage.

Section 4. Condemnation or Default.

(a) If any lot or portion thereof or the common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institution holder of any first mortgage on a lot will be entitled to timely written notice of any such proceeding or proposed acquisition.

(b) The holder of a first mortgage on any lot shall be given prompt notice of any default in the lot mortgagor's obligations hereunder not cured within thirty (30) days of said default, provided that the holder shall have given notice to the Association that it is a holder as to the lot of such mortgagor and shall have requested the notice of default as herein set forth.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or 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 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 2. Severability. Invalidation of any 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. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety (90%) percent of the lots, and thereafter by an instrument signed by the owners of not less than seventy-five (75%) percent of the lots.

Section 4. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions shall be delivered, following execution by the owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been executed by the owners of the required number of lots as provided in Section 4 of this Article. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS OF
ASHLEY FOREST SUBDIVISION

By authority of its Board of Directors, Ashley Forest Association of Durham hereby certifies that the foregoing instrument has been duly executed by the owners of _____ percent of the lots of Ashley Forest and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Ashley Forest Subdivision.

This ____ day of _____, 198__.

