

BYLAWS OF
KILDAIRE FARMS HOMEOWNERS ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is Kildaire Farms Homeowners Association, hereinafter referred to as the "Association". The principal office of the corporation is located at 1334 Kildaire Farm Road, Cary, Wake County, North Carolina, but meetings of members and directors may be held at such places within Wake County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Kildaire Farms Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Articles of Incorporation of this Association, 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, 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 that serve only a limited number of Lots and which may include, but specifically is not limited to, driveways and walkways serving Patio house and Townhouse Lots, 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. "Racquet and Swim Club Common Area" (herein referred to as "R & S Common Area") shall mean those portions of the Common Area designated by the Declarant and approved by the Town of Cary, which serve the Owners of Lots who voluntarily join the Kildaire Farms Racquet and Swim Club and which serve persons residing outside Kildaire Farms who are permitted to join said Club pursuant to the provisions of the Articles of Incorporation of the Kildaire Farms Racquet and Swim Club and the Declaration of Covenants, Conditions and Restrictions for the Kildaire Farms Racquet and Swim Club. R & S Common Area may include, but specifically is not limited to, tennis courts, swimming pool(s), clubhouse(s) and parking areas, driveways and walkways which serve members of the Kildaire Farms Racquet and Swim Club. R & S Club Common Areas shall be maintained at the sole expense of the members of the Racquet and Swim Club and not at the expense of the Association.

Section 7. "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, Limited Common Area and R & S Common Area.

Section 8. "Detached House Lot" shall mean and refer to any Lot other than Lots located in sections designated for Townhouse construction, Patio house construction, and apartment construction.

Section 9. "Townhouse Lot" shall mean and refer to any Lot located in an area designated for Townhouse construction, the designation of which is not changed before improvements are constructed thereon.

Section 10. "Patio House Lot" (or "Garden House Lot") shall mean and refer to any Lot located in an area designated for Patio (or Garden) house construction, the designation of which is not changed before improvements are constructed thereon.

Section 11. "Apartment Lot" is a Lot located in an area designated for apartment construction.

Section 12. "Lot in Use" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and occupied as a dwelling unit.

Section 13. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15. "Declarant" shall mean and refer to Kildaire Farms Development Corporation and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 16. "Amenities" shall mean the facilities constructed, erected, or installed on the Common Area for the use, benefit, and enjoyment of Members.

ARTICLE III

MEMBERSHIP

Section 1. Members. The Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee or undivided interest in any Lot, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such 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 shall more than one vote be cast with respect to any Lot, and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in 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:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, 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 hereunder, additional lands are annexed to the Properties, without the assent of Class A members, by reason of the development of such additional lands by the Declarant, all within the times and as provided for in the Declaration and Articles of Incorporation; or
- (b) on January 1, 1986.

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 for any period during which any assessment against the Lot of a member remains unpaid.

ARTICLE V

BOARD OF DIRECTORS AND BOARD OF ADVISORS

Section 1. Number. The affairs of the Association shall be managed by a Board of not less than three (3) nor more than fifteen (15) Directors, who need not be members of the Association. The maximum number of Directors may be changed by amendment of the Bylaws of the Association. At or within ten (10) days after the first annual meeting, the members shall elect a Board of three (3) Directors, one of whom shall serve for a term of one (1) year, one of whom

shall serve for a term of two (2) years, and one of whom shall serve for a term of three (3) years; and all successor Directors shall be elected for terms of three (3) years, except as otherwise provided herein. At or within ten (10) days after each annual meeting thereafter, the members shall elect a Board consisting of the number of Directors that the Board, in its discretion, shall deem appropriate, but in no event to exceed fifteen (15) Directors, unless increased by amendment of the Bylaws. All Directors shall serve until their successors have been duly elected and qualified.

Section 2. Term of Office. The term of office of all Directors shall be for three (3) years and until their successors are duly elected and qualified; provided, the Board, prior to an election, may increase or decrease by one (1) year the initial term of any newly created directorship or directorships in order that the terms of no more than approximately one-third (1/3) of the Directors will expire in any one year, but successors elected to any office the term of which has been so varied shall serve for a term of three (3) years.

Section 3. Proportional Representation. It shall be the duty of the Board of Directors serving at the time of conversion of Class B to Class A membership to prepare a plan of representation on the Board of Directors from the membership, whereby the various residential areas and types of residences shall be fairly represented on the Board of Directors of this Association. Thereafter, each Board of Directors may, prior to the annual meeting, adopt a new plan of representation as deemed necessary by each such Board to reflect approximate proportional representation of the various residential areas and types of residences.

Prior to each annual meeting, the Board shall determine and inform the Nominating Committee of the proportionate representation of each residential area and type of residence and the number of Directors to be elected from these, including any newly created Directorships.

Section 4. Nomination Nomination for election to the Board of Directors shall be made by a Nominating Committee and reported to members at the annual meeting. Nominations also may be made from the floor at the

annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at least sixty (60) days prior to each annual meeting of members and shall serve until their successors are duly appointed and qualified. Such appointment shall be announced at each annual meeting.

Until such time as the Class B membership is converted to Class A membership, all nominations shall be at large. Following conversion of Class B to Class A membership, the Nominating Committee shall first nominate the candidates at large and then shall nominate a candidate or candidates to represent the various residential areas and types of residences in the proportions and for the term indicated by the Board. The nominator, whether the Committee or a member from the floor, shall indicate the specific directorship for which the nomination is made.

Section 5. Election. Election to the Board of Directors shall be by secret ballot. After close of nominations, the Board shall cause ballots to be prepared showing the names of all candidates and the specific directorship for which each candidate was nominated. The election shall be held within ten (10) days following the annual meeting of members at such hours and convenient polling place or polling places in, or in the vicinity of, Kildaire Farms, as the Board of Directors shall select. Notice of the polling places and hours shall be given at the annual meeting and shall be posted at the polling places at least seven (7) days in advance of the election.

At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

The Board of Directors may adopt rules and regulations regarding the conduct of the election, including, but not limited to: the form of the ballot; the nature and maintenance of the election records; the method of ascertaining the validity of proxies; the counting of ballots and tabulation of results; the inspection of records; challenges; and runoff elections.

Section 6. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. A recall election shall be conducted by the Board of Directors upon a resolution adopted by vote of three-fourths (3/4) of the Directors, or upon petition signed by members entitled to cast twenty-five per cent (25%) of the total votes. In the event of death, resignation, or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association. This provision shall not be construed to prohibit the reimbursement of any Director for his actual expenses incurred in the performance of his duties.

Section 8. Meetings.

- (a) Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should any meeting fall on a legal holiday, then that meeting shall be held at the same place and time on the next day which is not a legal holiday.
- (b) Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director.
- (c) Quorum. The majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.
- (d) Action Taken Without Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could have taken at a meeting by obtaining the written approval of all Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 9. Limitation of Liability. The Board of Directors, the individual members thereof, and the officers of the Association, when acting in their capacity as members or officers of the Board, shall be liable to the Association or its individual members only for wilful malfeasance, misfeasance, or nonfeasance, or for gross misconduct in office, and shall not be liable for any mistake of judgment, oversight, or negligent act or omission. The Board, in its discretion, may purchase insurance or bond, in such amount as it deems adequate and reasonable to indemnify and save harmless the Board, its members, and the officers of the Association against any liability arising out of their official activities that it or they may have to the Association or the individual members thereof, and the amount of such insurance or bond shall be the limit of such liability. The Board may also purchase such insurance or bond in such amount as it deems appropriate to indemnify and protect the Association, the Board, its members, and the officers of the Association against any contractual liability arising out of contracts made by or on behalf of the Association. Every contract made by the Board or by the officers or agents of the Association on its behalf shall contain a provision to the effect that the Board, the officers, or the agents, as the case may be, are acting only as agents of the Association and shall have no personal liability thereunder.

Section 10. Board of Advisors. During such time as the Class B membership exists, the Class A membership shall elect annually a Board of Advisors consisting of not less than five (5) nor more than fifteen (15) members, all of whom shall be Class A members of the Association.

The Board of Advisors shall have no right to manage the affairs of the Association but shall be a liaison Board which shall meet with the Board of Directors at such time as the Board of Directors shall designate, but not less than once each quarter. Initially, the Board of Advisors shall consist of two (2) Class A members from the Farmington Woods Section of Kildaire Farms, two (2) Class A members from the Woods of Kildaire Section of Kildaire Farms and one (1) Class A member from the Pebble Creek Townhomes Section of Kildaire Farms.

The number of the members of the Board of Advisors shall be fixed annually by the preceding Board. The initial Board shall consist of two (2) members

elected to serve for a term of three (3) years, two (2) members elected to serve for a term of two (2) years and one (1) member elected to serve for a term of one (1) year. All successive members of this Board shall be elected for terms of three (3) years. All members of this Board shall serve until their successors have been duly elected and qualified.

All other matters relating to the term of office, nomination, election, removal, compensation and meetings applicable to the Board of Directors as set forth under this Article V shall be applicable to the Board of Advisors except that all voting for the election of and removal of the Board of Advisors shall be limited to Class A members without any participation by any Class B member and without any control of the Board of Directors.

At such time as Class B memberships are converted to Class A memberships and a Board of Directors is elected without participation of Class B memberships, the Board of Advisors shall be dissolved but shall be reactivated in the event that Class B memberships shall be reinstated.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have the power:

- (a) to exercise for the Association all powers, duties, and authority vested in or delegated to this Association which is not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (b) to adopt and publish rules and regulations interpreting and applying the powers and duties enumerated in the Bylaws, Articles of Incorporation, and Declaration which the Board is empowered or directed to exercise, including, but specifically not limited to, the power to adopt and publish rules and regulations governing the use of the Common Area and amenities, and the personal conduct of the members and their guests thereon, and establishing penalties for the infraction thereof; and all rules and regulations and amendments thereto adopted by the Board shall be published and mailed or delivered to all members within seven (7) days following adoption and shall become effective ten (10) days following adoption. Such notice to a member of rules, regulations, or amendments shall be deemed notice to any person to whom the member has delegated his right of enjoyment;

- (c) to declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (d) to suspend the voting rights and right to use of the Common Area and amenities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights also may be suspended, after notice and subject to hearing, for a period not to exceed thirty (30) days for infraction of published rules and regulations, as provided in Article XII of these Bylaws.
- (e) to employ a manager, an independent contractor, or such other agents or employees as it deems necessary, and to prescribe their duties;
- (f) to maintain lots and to maintain and repair improvements thereon in accordance with the provisions of Article IX of the Declaration.
- (g) to exchange with any member a portion of the Common Area for a portion of the real property owned by such member within Kildaire Farms Planned Unit Development, as provided in Article X of the Articles of Incorporation, and Article XII of the Declaration.
- (h) to dedicate or transfer any Private Street or Streets to the Town of Cary or other governmental entity upon agreement of the Town or entity to accept the dedication or transfer and to maintain such street or streets thereafter, upon approval of the Association as provided in Article V(d) of the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors:

- (a) to cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to members at every annual meeting of members or at any special meeting, when such statement is requested in writing in advance of the special meeting by one-fourth (1/4) of the Class A members who are entitled to vote;

- (b) to prescribe the duties of and to supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;
- (c) as more fully provided herein and in the Declaration:
 - (1) to fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period, as hereinafter provided in Article XI;
 - (2) to send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;
- (d) to issue or cause to be issued, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of any assessment therein stated to have been paid;
- (e) to procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) to cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) to cause the Common Area and amenities to be maintained.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a President and a Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create; and the officers of the Association shall have such powers as are necessary to properly administer the affairs of the Association and as are set forth in these Bylaws and in appropriate resolutions adopted by the Board of Directors.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following the annual election of Directors.

Section 3. Term. The officers of the Association shall be elected annually by the Board, and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve. Any officer may be elected to successive terms.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, from time to time, may determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer who, as a condition of his service, is required to be a member of the Board or a member of the Association, shall be disqualified from holding such office upon loss of membership on the Board or in the Association, as the case may be.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces. Any officer so appointed shall have the same qualifications as those required of his predecessor.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. Unless amended or altered by the Board, in its discretion, the duties of the officers shall be as follows:

- (a) President. The President shall be the principal executive officer of the Board of Directors and shall preside at all meetings thereof; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, contracts, and other written instruments, and shall co-sign all promissory notes.
- (b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, or his inability or refusal to act, and shall exercise and discharge other duties as may be required of him by the Board.
- (c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of members, and any other notice required to be given by the Board; keep appropriate current records showing the members of the Association together with their addresses; record, compile, revise, index, and publish all rules and regulations adopted by the Board; and perform such other duties as may be required by the Board.
- (d) Treasurer. The Treasurer shall be responsible for the receipt and deposit in appropriate bank accounts of all monies of the Association and for the disbursement of such funds as directed by resolution of the Board of Directors; shall keep or cause to be kept proper books of account; shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; shall notify every member of the amount and due date of each annual assessment and special assessment at least thirty (30) days before such assessment shall be due; shall prepare or cause to be prepared

an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting; and shall deliver a copy of such budget and statement to each member of the Association.

ARTICLE VIII

COMMITTEES

Section 1. Architectural Control Committee. The Board shall appoint an Architectural Control Committee composed of three (3) or more members, which shall review and approve or disapprove the plans and specifications setting forth any proposed alteration or modification of any existing improvements or the construction, erection, or installation of additional improvements on any of the Properties, as provided in the Declaration.

Section 2. Nominating Committee. The Board shall appoint a Nominating Committee, comprised of such members and having such duties and responsibilities as are provided in these Bylaws and the rules and regulations of the Association.

Section 3. Elections Committee. The Board shall appoint an Elections Committee, comprised of such members and having such duties and responsibilities as are provided in these Bylaws and the rules and regulations of the Association.

Section 4. Other Committees. The Board of Directors may appoint such other committees, comprised of such members and having such duties as are set forth in the rules and regulations of the Association, as the Board deems appropriate in carrying out its purposes, such as:

- (a) A Recreation Committee, which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines.
- (b) A Maintenance Committee, which shall advise the Board of Directors on all matters pertaining to the maintenance,

repair, reconstruction, replacement, or improvement of the Properties, and shall perform such other functions as the Board, in its discretion, determines.

- (c) A Publicity Committee, which shall inform the members of all activities and functions of the Association and, after consulting with the Board of Directors, shall make such public releases and announcements as are in the best interests of the Association.
- (d) An Audit Committee, which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting as provided in Article VII, Section 8(d). The Treasurer shall be an ex officio member of the Committee.
- (e) A Grievance Committee, which shall hear or receive oral or written grievances of members, and shall consult and advise with the Board concerning resolution of such grievances.

Section 5. Complaints. In the event that the Board deems it inappropriate to appoint a Grievance Committee, it shall be the duty of all other committees to receive complaints from members on any matter involving Association functions, duties, and activities within its field of responsibilities. Each committee shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director, or officer of the Board who is, or may be, further concerned with the matter presented.

ARTICLE IX

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held on or before October 1, 1976, on the date and at the time and place fixed by the Board of Directors in its rules and regulations. Subsequent annual meetings thereafter shall be held on the same date, and at the same

time and place, unless changed by amendment of the rules and regulations. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of members who are entitled to cast one-fourth (1/4) of all of the votes of the entire membership or who are entitled to cast one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary by mailing a copy of such notice at least fifteen (15) days before such meeting to each member entitled to vote thereat. Such notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If the date, time, or place of an annual meeting is changed by amendment of the rules and regulations of the Board of Directors, notice of such change shall be given within fifteen (15) days after adoption of the amendment and at least thirty (30) days prior to the date of the annual meeting.

Section 4. Quorum. The presence at the meeting of members or proxies entitled to cast one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or the Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented; and if any meeting is adjourned for lack of a quorum, the quorum required at any subsequent meeting shall be one-half (1/2) that required at the preceding meeting.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and shall be

filed with the Secretary. Any proxy may be revoked, in writing, by the member who gave the proxy; and every proxy shall automatically cease upon death of the member or conveyance by him of his Lot.

ARTICLE X

PROPERTY RIGHTS OF MEMBERS

Section 1. Rights of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area as set forth in the Declaration, subject to the provisions and limitations contained therein.

Section 2. Delegation. Any member may delegate his rights of enjoyment of the Common Area and amenities to the members of his family, to his tenants, or to contract purchasers, who reside on the property. Members so delegating shall notify the Secretary, in writing, of the name of each delegee. The rights and privileges of such delegees are subject to suspension to the same extent as those of the member.

ARTICLE XI

ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Notwithstanding any provision or inference in this Declaration to the contrary, no detached house lot, Townhouse lot, or Patio House lot, shall be subject to any annual or special assessment until and unless such lot becomes a Lot in Use, except as follows: Following approval of each area for annexation by both the Town of Cary and either the Veterans Administration or the Federal Housing Administration and the annexation of each such area by the Declarant, and before the sale of any lot in the area annexed, the Common Area of such annexed area shall be conveyed to the Association. Thereafter, beginning on the first day of the first month following such conveyance, the owner of every lot within the annexed areas which is not a Lot in Use shall pay to the Association for each lot owned a sum equal to one-fourth (1/4) of the monthly sum payable by the owner of a Lot in Use as annual assessment. Such payments shall continue monthly as to each such lot until each such lot becomes a Lot in Use.

The Declarant, for each Lot in Use owned within the Properties, hereby covenants, and each Owner of any Lot in Use, by acceptance of a deed therefor,

whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, establish, and collected from time to time as hereinafter provided. The annual and special assessments on Lots in Use and the annual assessments on lots which are not Lots in Use, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. For such assessment, together with such interest and 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 shall not pass to his successors in title unless expressly assumed by them. All assessments relating to the Common Area, other than Limited Common Area, shall be shared equally by the Owners of each Lot in Use. All assessments which are for the maintenance or improvement of Limited Common Areas shall be shared equally by those Owners of Lots served by such Limited Common Areas.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Properties, the recreation, health, safety, and welfare of the residents in the Properties, the enforcement of the Declaration, Protective Covenants, and the rules of the Association, and, in particular, for the improvement and maintenance of the Properties and for providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Notwithstanding any provision or inference to the contrary herein, the paramount duty of the Association is to maintain the Private Streets in at least as good condition as publicly maintained streets in the Properties, and this duty shall have precedence over the maintenance of the remainder of the Common Area, unless a Private Street or Streets are accepted for maintenance by the Town of Cary or other governmental entity.

Section 3. Basic and Maximum Annual Assessments. To and including December 31, 1976, the basic (and maximum) annual assessment shall not be in

excess of \$90.00 per Lot in Use, except as otherwise provided herein, the exact amount of which shall be determined and set from time to time by the Board of Directors.

- (a) From and after December 31, 1976, the basic annual assessment may be increased by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed five per cent per year or 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 percent changes from selected dates (published by the U. S. Bureau of Labor Statistics, Washington, D.C.) or such Index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1, whichever is greater; and such increased assessment shall be the maximum annual assessment.
- (b) The method of computation to be used in determining an increase pursuant to the Consumer Price Index in subsection (a) above, shall be to determine the index (computed from the base year 1967) for the U.S. City Average for the immediately preceding July 1, which shall be the "Base Index". Next, determine the U.S. City Average index for July 1 of the year immediately preceding the Base Index, which shall be the "Previous Base". Subtract the Previous Base from the Base Index. Divide the difference so obtained ("Index Change") by the Previous Base, and multiply the result obtained by 100. The latter figure is the percentage increase in the Consumer Price Index. (The following is by way of illustration only, using hypothetical figures. The illustration assumes that "the immediately preceding July 1" was July 1, 1976:

U.S. City Average, July 1, 1976 (Base Index) = 133.4
 U.S. City Average, July 1, 1975 (Previous Base) = 125.2
 Index Change = 8.2
 $8.2 \text{ (Index Change)} \div 125.2 \text{ (Previous Base)} = 0.066$
 $0.066 \times 100 = 6.6\% = \text{Percentage Change in Index, July 1, 1975 - July 1, 1976.}$

- (c) After December 31, 1976, the basic annual assessment may be increased by an affirmative vote of two-thirds (2/3) of the members or proxies who are entitled to vote at a meeting called for such purpose, and the increased basic annual assessment shall be the basic annual assessment. Written notice of the meeting shall be given to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the date, time, place, and purpose of the meeting.
- (d) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums.
- (e) The provisions of this Section shall not apply to nor be a limitation upon any change in the basic and maximum assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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 cost of any 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 be adopted by a two-thirds (2/3) affirmative vote of each class of members, voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the time, place, and purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments relating to the Common Area must be fixed at a uniform rate for all Lots in Use and may be collected on a monthly basis. Similarly, annual assessments relating to Common Areas must be fixed at a uniform rate for all other Lots 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(c) and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (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. Such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots in Use and other Lots, then or thereafter existing, on the first day of the month following the conveyance of a portion of the Common Area, unless postponed or waived by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal 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. If the Board of Directors of the Association shall determine that it would be inequitable to require the payment of the full amount of

annual assessment (as might be the case if only a few of the recreational amenities are available for the use of members) the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment 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 reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum, which interest rate may be increased to a maximum of eight per cent (8%) per annum with the consent of the VA or FHA, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. 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 9. 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; provided, however, that the sale or transfer of any Lot, pursuant to a mortgage foreclosure or any proceeding in lieu of foreclosure 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.

ARTICLE XII

SUSPENSION OF PRIVILEGES; NOTICE; HEARING

Section 1. Right to Hearing.

- (a) In the event that any member, or his delegee, violates any rules or regulations of the Association, such member's voting right

shall not be suspended (except for nonpayment of assessment), nor shall his or his delegee's right of use of the Common Area and amenities be suspended for a period longer than seven (7) days, unless the member or his delegee has been extended an opportunity for a hearing thereon.

- (b) No member shall be entitled to a hearing when the reason for the suspension of voting privileges or right of use of Common Area and amenities is nonpayment of assessments.

Section 2. Notice.

- (a) Notice of suspension shall be given to the member or his delegee (or if the delegee is less than 18 years of age, to the member and the delegee), in writing, and shall either be delivered in person or by first-class mail, postage prepaid. The notice shall state the reason for the suspension, the date that such reason arose, the length of the suspension, the rights affected by the suspension, and the dates that the suspension shall begin and end.
- (b) If the suspension arises from the violation of the rules or regulations of the Association and affects the voting rights of the member or his or his delegee's right of use of the Common Area and amenities for longer than seven (7) days, the notice shall advise that the member (or his delegee) shall be entitled to a hearing thereon at a date and time certain if the member shall so request, in writing, within seven (7) days after date of the notice.

Section 3. Hearing.

- (a) All hearings shall be conducted by the Board of Directors or by a committee or individual designated by the Board for such purpose. If the hearing is conducted by a designated committee or individual, the member shall have the right to appeal the decision of such committee or individual to the Board of Directors.

- (b) Hearings shall be conducted in accordance with rules and regulations of the Association, which shall provide for a fair and impartial hearing and shall permit the member to present matters in defense, mitigation, or extenuation. It is not required, however, that the conduct of the hearings shall conform to rules of evidence and procedure applicable to legal proceedings.
- (c) A hearing shall be held not less than ten (10) days nor more than fifteen (15) days following notice of suspension; but the time may be varied for good cause shown, and the hearing body may grant continuances.
- (d) If the notice of suspension does not specify the time, date, and place of hearing, the hearing body shall establish the time, date, and place upon receipt of the member's written request for a hearing, and notice thereof shall be delivered to the member at least forty-eight (48) hours in advance of the hearing.
- (e) No suspension shall become effective until completion of any hearing or appeal thereon to which the member may be entitled and for which request is made.
- (f) The decision rendered following hearing by a committee or individual designated by the Board of Directors for such purpose shall be conclusive unless the member shall appeal therefrom, in writing, to the Board of Directors within three (3) days following notice of the final decision. The Board of Directors may prescribe the manner of appeal in its rules and regulations. Any final decision of the Board of Directors made following a hearing or an appeal shall be conclusive.

ARTICLE XIII

DISSOLUTION OR INSOLVENCY; NONPROFIT CORPORATIONS

No nonprofit corporation for maintenance of Private Streets or Limited Common Areas, as provided for in the Articles of Incorporation, shall be formed upon dissolution or insolvency of the Association or loss of ownership of the Common Area by the Association, unless all Owners of Lots having an interest in the Private Street or Limited Common Area to be maintained by such corporation shall be members thereof. Upon formation of a nonprofit corporation by a majority vote of such Owners, the rights, responsibilities, and duties of all such Owners, inhering through membership in the corporation, shall be covenants and conditions running with the ownership of the Lots involved, and shall be binding upon the Owners of such Lots, their heirs, executors, successors, and assigns.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Fiscal Year. The fiscal year, unless hereafter changed by the Board of Directors in its discretion, shall be the calendar year.

Section 2. Assessment Period. The Assessment Period shall be any consecutive twelvemonth period that the Board of Directors, in its discretion, shall establish, but the first Assessment Period shall begin on the first day of the month following the conveyance of the Common Area, or any portion thereof, by the Declarant to the Association.

Section 3. Books and Records. The books, records, and papers of the Association shall be subject to inspection by any member at any time during reasonable business hours. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable costs.

Section 4. Facsimile Signature and Seal. The Board of Directors, by adoption of an appropriate resolution, may provide for the use of facsimile signature on any document or instrument required to be signed by the President when such document or instrument is to be co-signed or countersigned by another officer of the Association; and may provide for use of facsimile of the corporate seal of the Association.

Section 5. Notice. Unless otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, all notices required to be given shall be in writing, shall set forth the purposes for which the notice is given, shall state the time, date, and place of any event for which notice is given, and shall be mailed or delivered to each member at his last known address at least thirty (30) days and not more than sixty (60) days prior to the occurrence of the meeting or event of which notice is given. Every notice shall bear the signature or facsimile of the President and shall be issued by the Secretary. Notice shall be deemed given as to any member when mailed by first-class mail, postage prepaid, or delivered, to the member's last known address.

Each member shall be responsible for informing the Secretary of his address and of any subsequent changes thereof; and no notice shall be required to be given to any member who has failed to so inform the Secretary.

The thirty (30) day notice provision shall not apply to any member who has been an Owner for less than thirty (30) days preceding the meeting or event of which notice is given, but the Secretary shall make a good faith effort to give any such member as much notice as time permits.

Section 6. Conflicts. If there should be any conflicts between the provisions of these Bylaws and the provisions of the Articles of Incorporation, the provisions of the Articles of Incorporation shall control; and if there should be any conflict between the provisions of these Bylaws and the provisions of the Declaration, the provisions of the Declaration shall control.

ARTICLE XV

AMENDMENT

These Bylaws may be amended, at the annual meeting of members, or at a special meeting called for that purpose, by an affirmative vote of a two-thirds (2/3) majority of a quorum of members present in person or by proxy, except that those portions of these Bylaws which are the equivalent of provisions appearing in the Declaration or Articles of Incorporation may be amended only in the manner provided in the Declaration or Articles, as

the case may be; provided, that either the Declarant or the Board of Directors of the Association, in their discretion and without a vote of the members, but with the approval of the Veterans Administration or the Federal Housing Administration, may amend these Bylaws to the extent, and only to the extent, necessary to achieve or to maintain a tax-exempt status for the Association, or to qualify the Properties or any portion thereof to receive loans from the Federal Housing Administration, the Veterans Administration, or other government agency for the construction or improvement of dwellings on the Properties or the construction or improvement of the Common Area or amenities.

If the Declaration or Articles of Incorporation are amended, equivalent provisions of these Bylaws shall be deemed to have been amended in like manner, and the Bylaws shall be revised to reflect such amendment.

IN WITNESS WHEREOF, we, being all of the Directors of the KILDAIRE FARMS HOMEOWNERS ASSOCIATION, have hereunto set our hands this the ____ day of _____, 1976.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the KILDAIRE FARMS HOMEOWNERS ASSOCIATION, a North Carolina corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the _____ day of _____, 1976.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, this the _____ day of _____, 1976.

Secretary