

Prepared by and return after recording to:  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COLE MILL TOWNES**

WILLIE L. COVINGTON  
REGISTER OF DEEDS  
DURHAM COUNTY, N.C.

THIS DECLARATION, is made as of the 21st day of August, 1997 by COLE MILL PARTNERSHIP, a North Carolina general partnership, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property located in the development known as Cole Mill Townes in Durham County, North Carolina, containing approximately 3.54 acres, which is more particularly described on Exhibit A and is more particularly shown on the plat recorded at Plat Book 137 at page 58 of the Office of the Register of Deeds of Durham County, North Carolina, together with all buildings and improvements now or hereafter constructed thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Declarant intends to construct townhome units on said real estate in accordance with the Master Plan (defined below) and to submit said property to this Declaration (subject to the rights of Declarant to withdraw portions of the property as provided below);

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

**ARTICLE I  
DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Cole Mill Townes Homeowners Association, its successors and assigns.

**Section 2.** "Board" shall mean the board of directors of the Association.

**Section 3.** "By-Laws" shall mean and refer to all By-Laws by the Association which are set forth in Exhibit B attached hereto.

**Section 4.** "Common Area" shall mean all real or personal property, including any easements in real property, owned by the Association for the common use and enjoyment of the Owners. Declarant may from time to time grant easements and convey portions of the Property

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to the Association, and such easements and portions of the Property shall become Common Areas.

**Section 5.** "Declarant" shall mean and refer to Cole Mill Partnership, its successors and assigns if such successors or assigns should acquire Declarant's interest in the Property prior to the transfer of Declarant Control of the Property.

**Section 6.** "Declarant Control" shall mean and refer to that period of time during which Declarant is entitled to three (3) votes for each Unit and each prospective Unit shown on the Master Plan. The period of Declarant Control shall begin as of the date hereof and shall continue until the happening of either of the following events, whichever occurs earlier:

(a) Thirty (30) days after seventy-five percent (75%) of the Units have been conveyed to Unit purchasers (the number of Units for purposes of this subparagraph shall be the total number of Units then created plus any prospective Units shown on the then current Master Plan that have not yet been created); or

(b) December 31, 2000; or

(c) When, in its discretion, the Declarant so determines.

**Section 7.** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Cole Mill Townes, as the same may be amended and supplemented from time to time.

**Section 8.** "Lot" shall mean and refer to any parcel of land within the Property intended to be conveyed to an Owner and thereafter owned, held and conveyed as a fee simple property and upon which there is to be constructed a single residential dwelling unit and appurtenant structures such as garages and gazebos. A Lot shall be created by recordation of a subdivision plat in the Durham County Registry. A Lot may be composed of noncontiguous property (such as the areas of the townhome and the related garage or parking area), but all such parts of a Lot shall be owned and conveyed together and ownership of such portions of a Lot shall not be divided.

**Section 9.** "Master Plan" shall mean and refer to the Master Plan for development of the Property, dated May 6, 1996 and prepared by Blakely Design Group, a copy of which is attached hereto as Exhibit C, as the same may be amended from time to time in accordance with the provisions of Article XII, Section 5.

**Section 10.** "Member" shall mean and refer to all members of the Association.

**Section 11.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, excluding those having such interest merely as security for the performance of an obligation.

**Section 12.** "Project" shall mean and refer to Cole Mill Townes, a townhome development located in Durham County, North Carolina, developed pursuant to and in accordance with the Master Plan and this Declaration.

**Section 13.** "Property" shall mean and refer to that certain real property which has been submitted to this Declaration. The Property is described on Exhibit A attached hereto. In the event Declarant withdraws any portion of the property described on Exhibit A in accordance with Article XII Section 6, "Property" shall thereafter refer to the portion of the property described on Exhibit A which has not been withdrawn and continues to be subject to this Declaration.

**Section 14.** "Unit" shall mean and refer to any Lot together with the dwelling constructed or to be constructed on the Lot and all other improvements constructed thereon. Each Unit is intended for use as a single-family residence and no portion of the Unit may be subdivided or partitioned or held in separate ownership from any other part of the Unit (this provision shall not prevent Units from being held in undivided interests). A Unit shall be deemed created when a certificate of occupancy for such dwelling is issued by the governmental authorities having jurisdiction thereof.

It is the intention of Declarant to develop the Property in phases generally in accordance with the Master Plan.

## ARTICLE II PROPERTY RIGHTS

**Section 1.** Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall include an easement over the Common Area for access, ingress and egress from and to public streets and walkways and which shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Association to dedicate or transfer portions of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded. This provision shall not be construed as a limitation upon the rights of Declarant to grant easements contained in Article XIII hereof.

**Section 2.** Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of his family or his tenants who reside in the Owner's Unit.

**Section 3.** Parking Rights. Each Unit shall include either a garage or two parking spaces for the use of vehicles, in which the vehicles of the Owner shall be parked and stored. Other parking areas that may be shown on the Master Plan and provided are for the temporary use of guests of the Owner, and no Owner shall use such parking areas for regular or permanent storage of vehicles (including boats) without the express permission of the Association. The Association may adopt rules and regulations governing the use of parking areas.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners, with the exception of the Declarant, who shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B Member(s) shall be the Declarant, which shall be entitled to three (3) votes for each Unit owned. At the end of the period of Declarant Control, the Class B membership shall cease and be converted into a Class A membership entitled to one (1) vote for each Unit then owned by Declarant.

**Section 3.** Suspension of Voting Rights. The Association shall have the right to suspend the voting rights of an Owner who is a Class A Member for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The Association shall have the right to suspend the voting rights of the Class B Member with respect to any Unit for any period during which any assessment against such Unit remains unpaid. Such suspension shall not affect the voting rights of the Class B Member with respect to any Units as to which assessments are current or the voting rights with respect to prospective Units (as to which no assessments are due).

ARTICLE IV  
ASSESSMENTS

**Section 1.** Creation of Assessments. The Declarant, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) special assessments for damages, such assessments to be established and collected as hereinafter provided. The assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No

Owner may waive or otherwise exempt himself from liability for the assessments provided or herein, including, by way of illustration, but not limitation, by non-use of the Common Area or abandonment of the Unit. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or the Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Project and in particular for (i) the improvement and maintenance, including the exterior and structural maintenance of the Units, and (ii) services and facilities devoted to this purpose or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the payment of public assessments levied against the Common Area, the procurement and maintenance of insurance in accordance with Article X of this Declaration, the employment of attorneys to represent the Association when necessary, reasonable reserves for all of the above and such other needs as may arise.

**Section 3. Computation of Assessment.** It shall be the duty of the Board, at least thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year, including projected costs for all of the matters set forth in Section 2 above. The budget and assessments shall become effective unless disapproved at the meeting by a vote of the Members representing at least a majority of the votes of each class of Members. Assessments per Unit for the initial year of operation of the Association shall not exceed seventy-five dollars (\$75.00) per month. Thereafter, for the lesser of two (2) years or the period during which the Class B membership exists, assessments per Unit shall not increase by more than ten percent (10%) per year over the previous year's assessments. During the period when assessments are subject to the maximums provided herein, Declarant shall pay actual costs of operation of the Association in excess of the assessments provided for herein.

**Section 4. Special Assessments.** 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, reconstruction, repair or replacement of a capital improvement upon the Common Area or the Units, including fixtures and personal property related thereto, if such construction, reconstruction, repair or replacement is necessary and has not been adequately provided for by annual assessments, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Special Assessments for Damages.** In addition to the annual and special assessments described in Sections 3 and 4, in the event that the need for maintenance, repair or replacement of any Common Area or the exterior or structure of any Unit (or any other maintenance matters which are the responsibility of the Association) is caused through the willful or negligent act of an Owner, his family, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, and the costs of such maintenance, replacement or repairs is not covered by insurance maintained by the Association, then the Association may levy a special assessment against such Owner and his Unit for the purpose of defraying, in whole or in part, the cost of any maintenance, repair or replacement. In addition, the Association may levy against an Owner and his Unit the amount of any increase in insurance premiums for insurance maintained by the Association if such increase is attributable to the willful or negligent acts of such Owner, his family, guests, or invitees. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 6. Notice and Quorum For Any Action Authorized Under Sections 3, 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all Members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the 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 60 days following the preceding meeting.

**Section 7. Uniform Rate of Assessment.** Both annual and special assessments under Sections 3 and 4 must be fixed at a uniform rate for all Units and may be collected on a monthly basis. Special assessments for damages under Section 5 shall be charged only against particular Members and Units, and shall be collected on such basis as the Association determines.

**Section 8. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall be collected on a monthly, quarterly or annual basis (as determined by the Board) and shall commence as to each Unit on the first day of the month following the earlier to occur of (i) the date of conveyance of the Unit by Declarant or (ii) the date one hundred eighty (180) days following the creation of the Unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Annual and special assessments under Section 3 and 4 shall be payable, once established, without notice or demand. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable administrative charge to be established by the Board, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Unit in the same manner as real estate deeds of trust may be foreclosed in the State of North Carolina, and interest, costs and reasonable attorneys' fees incurred in connection with such action or foreclosure shall be added to the amount of such assessment. In addition, the voting rights of an Owner may be suspended while assessments remain unpaid as provided in Article III, Section 3 of this Declaration. 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 Unit.

**Section 10. Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Unit shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Unit pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. Any such delinquent assessments which are extinguished as a result of a transfer pursuant to a foreclosure may be reallocated and assessed to all of the Units as a common expense. No such sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

**Section 11. Exempt Property.** All Common Area and all property dedicated to, and accepted by, a local public authority shall be exempt from assessments.

#### ARTICLE V ARCHITECTURAL CONTROL

Until such date as construction of all Units contemplated by the Master Plan has been completed, all new construction or modifications to existing improvements within the Property shall be subject to the architectural review by Declarant, and thereafter any construction or modifications to existing improvements shall be subject to architectural review by the Board. All Units and other improvements shall be of consistent architectural design and construction standards. No person other than Declarant shall commence any construction or modifications to existing improvements until such time as the plans and specifications and identity of the contractor have been approved in writing by Declarant (or by the Board as appropriate).

In addition to the aforesaid architectural restrictions, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made, nor shall any interior addition, change or alteration be made within a Unit, including within a courtyard area, which is visible from the exterior of a Unit, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to

harmony of external design and location in relation to surrounding structures and topography by the Declarant (or the Board as appropriate).

Nothing herein contained shall be construed to permit interference with the development of the Property by the Declarant so long as said development follows the general plan of development of the Project in accordance with the Master Plan.

## ARTICLE VI RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 1. Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

**Section 2. Exterior and Structural Maintenance.** In addition to maintenance upon the Common Area, the Association shall provide exterior and structural maintenance for each Unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of structural walls, foundations, utility lines (unless such lines are solely interior lines and such utilities are separately metered), party walls, roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior and structural maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Unit at all reasonable times to perform maintenance as provided in this Article.

**Section 3. Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Project conveyed to it by the Declarant.

**Section 4. Rules and Regulations.** The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspensions of the right to vote and the right to use the Common Area except as necessary for ingress and egress to and from the Unit. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. In addition, the Association may, through the Board, by contract or other agreement, enforce county ordinances.

**Section 5. Implied Rights.** The Association may exercise any other right to privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege

reasonably to be implied from the existence of any right or privilege given to it in the foregoing documents or reasonably necessary to effectuate any such right or privilege.

**Section 6. Governmental Interests.** Neither the Association, the Declarant, any Member or other person with an interest in the Property shall have the power to take or shall take any action which would preclude annexation of the Property by the City of Durham, North Carolina, including seeking annexation by any other governmental body, seeking incorporation as a municipality, seeking status as a statutory special service district, or seeking to merge in all or part with any special purpose district.

Without objection, the Association shall permit the Declarant to designate sites within the Property for utility easements and facilities serving the Property; provided such easements and facilities do not unreasonably interfere with the use and enjoyment of a Unit by the Owner.

**Section 7. Right of Entry.** The Association shall have the right, but shall not be obligated, to enter into any portion of the Property for maintenance, emergency, security and safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails to refuse to cure the condition upon request by the Board.

## ARTICLE VII PARTY WALLS

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Units and placed on the dividing line between the Units shall constitute a party wall. The Association shall maintain and repair party walls, except that the Unit Owners shall be responsible for painting and/or wallpapering and decorating the surface of the party wall which is part of their Unit. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

## ARTICLE VIII USE RESTRICTIONS

**Section 1. Land Use and Building Type.** No Unit shall be used except for residential purposes.

**Section 2. Dwelling Specifications.** No dwelling shall be permitted except those constructed generally in accordance with the Master Plan and consistent in general size, appearance and workmanship with other Units.

**Section 3. Nuisance.** No noxious or offensive activity shall be conducted in any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Section 4. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained in any Unit or in any swelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

**Section 5. Outside Antennas.** No outside radio or television antennas shall be erected on any Unit within the Property unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

## ARTICLE IX EASEMENTS

**Section 1. Utilities.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Master Plan and/or the subdivision plat(s) recorded with respect to the Property. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the right to grant additional easements, license or permit over Common Area for utilities, roads and other purposes reasonably necessary for the proper maintenance or operation of the Project.

**Section 2. Encroachments.** Each Lot, Unit and the Common Area shall be burdened with an easement for the encroachment of footings, eaves, overhangs, walls, stone veneer and similar encroachments of integral parts of the Units or structures constructed on the Lots or the Common Area.

**Section 3. Unintentional Encroachments.** In the event that any structure erected principally on any Lot shall encroach upon any Common Area or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Unit, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Area into any such Lot for so long as such encroachment shall naturally exist.

## ARTICLE X INSURANCE AND CASUALTY LOSSES

**Section 1. Insurance.** The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. All such insurance shall be in such form as the Board deems appropriate. If blanket all-risk coverage is not reasonably available, then at a minimum an

insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of such improvements in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area and insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage.

Premiums for all insurance required to be maintained by the Association shall be common expenses of the Association and shall be included in the annual assessment. Policies may contain reasonable deductibles, and, in the case of property insurance, the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the loss in the absence of insurance and, in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total.

All such insurance coverage obtained by the Board shall be written in the name of the Association as Trustee for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Association.

(c) Exclusive authority to adjust losses under policies in force on the Property obtained by the Association shall be vested in the Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) All property insurance policies shall have a guaranteed replacement cost provision.

(e) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, and the Owners, as to their actions taken in representing the Association or the Project;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration;

(vi) that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification or nonrenewal; and

(vii) Directors and Officers liability insurance.

In addition, to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, management agents and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

**Section 2. Individual Insurance.** Each Owner shall be required to obtain and continue in effect adequate blanket all-risk casualty insurance on their respective Unit(s). Such insurance shall be in such form as the Board shall deem appropriate and shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of the Unit(s) so covered in the event of damage or destruction from any insured hazard. Each Owner shall provide to the Association on or before the date of closing of said Owner's purchase of the Unit(s), a certificate establishing to the satisfaction of the Association that the Owner has obtained insurance of an amount and nature in compliance with this Article X, Section 2.

All such insurance coverage obtained by each Owner shall be written to include the name of the Association as an additional insured party. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) . Exclusive authority to adjust losses under policies in force on the Property obtained by the Owners shall be vested in the Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) All property insurance policies shall have a guaranteed replacement cost endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Durham County, North Carolina, area.

(d) Each Owner shall be required to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Owner, or any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) that the Owner and the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification or nonrenewal.

Each Owner shall additionally be responsible for obtaining contents insurance on any of his possessions within the Unit or any personal property of the Owner and liability insurance for matters occurring within the Units, the Association having no responsibility for obtaining such insurance. Any renter of a Unit shall be required to obtain an HO4 Renter's Policy with a minimum Three Hundred Thousand Dollars (\$300,000.00) liability coverage limit.

**Section 3. Disbursement of Proceeds.** Proceeds of insurance shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the

affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**Section 4. Damage and Destruction.**

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of any Owner or the Association, the Board, or its duly authorized agent, as appropriate, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty. Any repair or reconstruction carried out or ordered by an Owner shall be of a quality at least equal to the quality of the original materials and standards of construction for the Property.

(b) Any damage or destruction to the Common Area or the Units shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of each class of Members shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available. No mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

(c) If such repair or reconstruction is to be carried out on the Units using proceeds from insurance policies obtained by one or more Owners, then the Association shall have the authority, in its sole discretion, to either approve the contractor(s) hired by said Owner(s) to complete such repair or reconstruction or contract directly with one or more contractors to carry out such repair or reconstruction and use the insurance proceeds from any applicable insurance policies to pay said contractors.

(d) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

**ARTICLE XI  
MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers or guarantors of first mortgages on Units in the Project.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first mortgage or deed of trust (a "Mortgage") who provides written request to the Association (such

request to state the name and address of such holder, insurer, or guarantor and the Unit address), therefore becoming an "eligible holder," will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a Mortgage held, insured, or guaranteed by such eligible holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days, or any default in the performance by such Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible holders, as required in Sections 2 and 3 of this Article.

**Section 2. Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation (the "Mortgage Corporation"), the following provisions apply in addition to and not in lieu of the foregoing section of this Article. Unless two-thirds (2/3) of the holders of Mortgages or Voting Members representing two-thirds (2/3) of each class of Members in the Association give their consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer within the meaning of this subsection);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against the Owner;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall be constitute a change, waiver, or abandonment within the meaning of this subsection);
- (d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any losses for other than the repair, replacement or reconstruction of such Property.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration or By-Laws for any of the actions set out in this Article.

Holders of Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area or the Units and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area and the Units, and holders of Mortgages making such payments shall be entitled to immediate reimbursement from the Association.

**Section 3. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the holder of a Mortgage of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area or the Unit subject to the Mortgage.

**Section 4. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

**Section 5. Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such change.

## ARTICLE XII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and liens 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 one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 3. Term.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by a majority of the then Owners and each member of the Board has been recorded within the year preceding the beginning of such successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 4. Recordation of Plats to Create Lots.** Declarant intends to develop the Property in phases and to construct or cause to be constructed the Units in clusters of two, three and four Units in accordance with the Master Plan. Until the Property has been fully developed in accordance with the Master Plan, Declarant shall have the right, from time to time to record subdivision plats creating the Lots without the consent or joinder of any Owner or the Association. Declarant agrees, in creating Lots, to dedicate to the Association nonexclusive access easements (which easements shall be part of the Common Area) to provide access to publicly maintained right of ways. In addition, Declarant may from time to time convey to the Association Common Areas in fee simple.

**Section 5. Modification of the Master Plan.** During the period of Declarant Control, Declarant shall have the right to modify the Master Plan from time to time, and in the event of such modification, Declarant shall record an amendment to this Declaration substituting the modified Master Plan as Exhibit C to this Declaration.

**Section 6. Withdrawal of Property.** Notwithstanding any other provision of this Declaration, in the event Declarant elects in its sole discretion not to develop a portion of the property described in Exhibit A as part of the Project, Declarant may withdraw portions of the property described in Exhibit A from this Declaration at any time before construction of Units is commenced upon the portion to be withdrawn (the "Withdrawn Parcel"), by recording an amendment to this Declaration withdrawing the Withdrawn Parcel. Upon Withdrawal, the Withdrawn Parcel shall cease to be part of the Property and shall no longer be subject to this Declaration, provided that the Withdrawn Parcel shall continue to be subject to any easements previously dedicated to Owners or the Association.

**Section 7. Amendment.** Prior to the sale of the first Unit, Declarant may amend this Declaration. During the period of Declarant Control after the sale of the first Unit, the Declarant may amend this Declaration so long as it still owns part of the Property and so long as the amendment has no adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of each class of Members and of the total votes of the Association, including seventy-five percent (75%) of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Durham County, North Carolina.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

**Section 8. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 9. No Partition.** Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property shall have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**Section 10. Contracts Executed During Declarant Control.** All contracts or leases executed by or on behalf of the Association prior to extinguishment of the Declarant Control, shall contain a termination clause permitting the Association to terminate the contract or lease at any time after extinguishment of Declarant Control, without cause and without penalty, upon not less than thirty (30) nor more than ninety (90) days written notice.

### ARTICLE XIII DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Durham County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, during the period of Declarant Control, the Declarant shall have the right to grant to public agencies, authorities or utility service providers easements necessary or desirable for service to the Project or any portion thereof.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant and any builder approved by Declarant to maintain and to carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units and sales offices, and the Declarant and any builder approved by Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and the Common Area owned by the Association as models and sales offices.

So long as Declarant continues to have rights under this section, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium of

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similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) ten (10) years from the date of this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused this Declaration to be executed under seal as of the date first above written.

DECLARANT:

COLE MILL PARTNERSHIP

(SEAL)

By:  (SEAL)

Robert A. Haywood, General Partner

By: ☒  (SEAL)

Bettie C. Brisson, General Partner

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STATE OF NORTH CAROLINA

COUNTY OF Durham

I, J. Gagan, a Notary Public for said County and State, do hereby certify that ROBERT A. HAYWOOD, general partner of COLE MILL PARTNERSHIP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.



Witness my hand and official seal, this the 19 day of August, 1997.

J. Gagan  
Notary Public

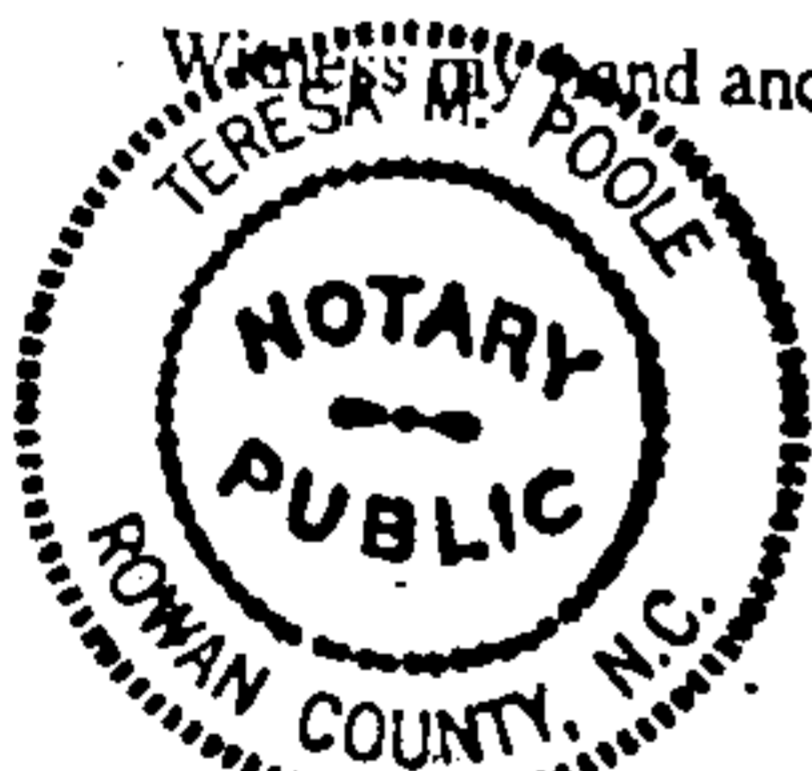
My Commission Expires:

10-6-2001

STATE OF NORTH CAROLINA

COUNTY OF Rowan

I, Teresa M Poole, a Notary Public for said County and State, do hereby certify that BETTIE C. BRISSON, general partner of COLE MILL PARTNERSHIP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.



Witness my hand and official seal, this the 1st day of August, 1997.

Teresa M Poole  
Notary Public

My Commission Expires:

1-21-2002

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State of North Carolina - Durham County

The foregoing or annexed certificate(s) of  
J. Gagan & Teresa M. Poole  
A Notary(Notaries) Public for the Designated Governmental  
units is(are) certified to be correct.

This the 21 day of Aug AD 1997  
WILLIE L. COVINGTON  
Register of Deeds

By: W. L. Covington  
Assistant / Deputy  
Register of Deeds

\*\* TOTAL PAGE.003 \*\*

**EXHIBIT A**

**The Property**

**EXHIBIT B**

**By-Laws**

**EXHIBIT C**

**Master Plan**

**EXHIBIT A**

**Legal Description**

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**BEGINNING** at a concrete monument at the intersection of the west side of Rose of Sharon Road and the north side of Cole Mill Road as shown on the plat and survey hereinafter referred to; thence along and with the north side of Cole Mill Road along a curve to the left having a radius of 795.55 feet, a length of 206.29 feet, a chord bearing of North 68-25-04 West 205.72 feet to a point; thence continuing along that line North 75-50-47 West 48.15 feet to an iron pin set; thence North 04-34-15 East 173.00 feet to a stake; thence North 80-25-45 West 75.20 feet to a stake; thence North 08-04-15 East 49.00 feet to a stake; thence North 82-30-42 West 43.50 feet to a stake on the Emory line; thence North 04-34-15 East 176.50 feet along the eastern line with the Emory and Umstead Property to a control corner at the northwest corner of the property; thence along the Erwin south line South 67-47-12 East 122.38 feet to a control corner at the southwest corner of the Graham property; thence with the southern line of the Graham Property South 89-31-25 East 336.75 feet to a stake in the western right-of-way line of Rose of Sharon Road; thence along and with the western right-of-way line of Rose of Sharon Road the following courses and distances: South 6-12-50 West 145.83 feet to a stake; along a curve to the right having a radius of 841.27 feet, a length of 231.52 feet, a chord bearing of South 14-05-28 West 230.79 feet to an iron pin set; South 21-58-30 East 52.74 feet to an iron pin set; South 46-35-46 West 52.00 feet to the point and place of **BEGINNING** and containing 3.54 acres, more or less, as shown on the Recombination Plat for Cole Mill Townes dated November 11, 1996, prepared by William C. Walker, Jr., RLS. See Real Estate Book 2267, Page 378, and Real Estate Book 2267, Page 380, Durham County Registry.

EXHIBIT B

BY-LAWS  
OF  
COLE MILL TOWNES  
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, PRINCIPAL OFFICE AND DEFINITIONS

**Section 1. Name.** The name of the corporation shall be Cole Mill Townes Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

**Section 2. Principal Office.** The principal office of the corporation shall be located in the County of Durham, North Carolina, but meetings of Members and Directors may be held at such places within the State of North Carolina, County of Durham, as may be designated by the Board.

**Section 3. Definitions.** Defined terms in these By-Laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Cole Mill Townes (the Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration") unless otherwise defined herein.

ARTICLE II

MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

**Section 1. Membership.** The Association shall have two (2) classes of membership, Class "A" and "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

**Section 2. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either within the Property or as convenient thereto as possible and practical.

**Section 3. Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board.

**Section 4. Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by Members representing at least twenty-five percent (25%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 5. Notice of Meetings.** Written notice stating the place, day and hour of any meeting shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the record of the Association, with postage thereon prepaid.

**Section 6. Waiver of Notice.** Waiver of notice of any meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting either before or after such meeting. Attendance at a meeting by a Member or his designated alternate shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 7. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by alternate, may adjourn a meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for convening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that members or their alternates representing at least twenty-five percent (25%) of the total votes of the Association remain present, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 8. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 9. Proxies.** At all meetings of Members, each Member may vote in person, by designated alternate or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit. A Member may designate a personal representative, or alternate, to vote for the member at any meeting of the Association. Notice of such designation shall be given in writing to the Secretary of the Association and shall be effective until revoked by the Member in writing or personally. Such designation shall also automatically cease upon conveyance by the Member of his Unit.

**Section 10. Majority.** As used in these By-Laws, the term "majority" shall mean more than fifty percent (50%) of the total number of persons or things of which a majority is required.

**Section 11. Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, the presence in person, by proxy or by alternate of Members representing one-third (1/3) of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

**Section 12. Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

**Section 13. Action Without a Meeting.** Any action required by law to be taken at a meeting of the Association, or any action which may be taken at a meeting of the Association, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

### ARTICLE III

#### NUMBER, SELECTION AND VETO

**Section 1. Governing Body; Composition.** The affairs of this Association shall be governed by a Board of Directors, each of whom shall have one vote. Except as provided in Section 3 of this Article, the Directors shall be Members of the Association.

**Section 2. Number of Directors.** The number of Directors in the Association shall be not less than three (3) nor more than seven (7), as the Board of Directors may from time to time determine by resolution. The initial Board shall consist of three (3) members.

**Section 3. Directors During Declarant Control.** The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant during the period of Declarant Control, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be Owners or residents. After the Declarant's right to select Directors has terminated, all Directors must be Members of the Association.

**Section 4. Nomination.** After the Declarant's right to select Directors has terminated, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

**Section 5. Election.** After the Declarant's right to select Directors has terminated, election to the Board of Directors shall be by secret written ballot. At such election the Members, and their alternates 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.

**Section 6. Veto.** From the termination date of the period of Declarant Control, the Declarant shall have a veto power over all actions of the Board as more fully provided in this Section. This power shall expire when the Declarant no longer owns any land described in Exhibit A to the Declaration or December 31, 2000, whichever occurs first, unless earlier surrendered. This veto power shall be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors or Modifications Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions to be approved at such meetings of the Board by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article IV, Sections 1, 2, and 3 of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective

action, policy, or program to be implemented by the Board or the Association. Declarant and its representatives or agents shall make its concerns, thoughts and suggestions known to the Members of the Association and/or the Board. Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board and to be taken by the Board or the Association or any individual Member if Board or Association approval is necessary for said action. This veto may be exercised by Declarant, its representatives or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association.

This Section 6 may not be amended without the express, written consent of the Declarant until Declarant no longer owns any land described in Exhibit A to the Declaration or until December 31, 2000, whichever first occurs.

#### ARTICLE IV

##### MEETINGS OF DIRECTORS

**Section 1. Organization Meetings.** The first meeting of the members of the Board of Directors following each annual meeting of the Members shall be held within thirty (30) days thereafter at such time and place as shall be fixed by the Board.

**Section 2. Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 3. Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, Treasurer or Secretary of the Association, or by at least two Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given at the Director's telephone number or sent not the Director's address as shown on the record of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal deliver, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

**Section 4. Waiver of Notice.** The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 5. Quorum of Board of Directors.** At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 6. Compensation.** No Director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association.

**Section 7. Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

**Section 8. Open Meetings.** Subject to the provisions of Section 9 of this Article, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

**Section 9. Action Without A Formal Meeting.** Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

## ARTICLE V

### POWERS AND DUTIES OF THE BOARD

**Section 1. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the

Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, the articles of incorporation of the Association (the "Articles") or these By-Laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager of the Project, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board shall be responsible for and shall have the power to do the following, by way of explanation, but not limitation:

- (a) adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights 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 may also be suspended after notice and hearing, for a period not to exceed 60 days, for infraction of published rules and regulations;
- (c) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
- (d) prepare and adopt annual budgets in which there shall be established the annual assessments of each Member;
- (e) make assessments to defray the common expenses of the Association (the "Common Expenses"), establish the means and methods of collecting such assessments and establish the period of the installment payments of the annual assessment; provided, that unless otherwise determined by the Board, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- (f) provide for the operation, care, upkeep, and maintenance of all of the Common Area, exterior and structural components of the Units and other property the Association has responsibility for;
- (g) designate, hire, and dismiss the personnel necessary for the maintenance, operation, repair, and replacement of the Common Area, exterior and structural components of the Units and other property the Association has responsibility for, and where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

- (h) collect the assessments, deposit the proceeds thereof in a depository which it shall approve and use the proceeds to administer the Association;
- (i) open bank accounts on behalf of the Association and designate the signatories required;
- (j) make or contract for the making of repairs, additions and improvements to or alterations of the Common Area and maintenance and repair of the Units in accordance with the provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;
- (k) enforce by legal means the provisions of the Declaration, these By-Laws and the rules and regulations adopted by it and bring any proceedings which may be instituted on behalf of or against the Members or any Unit occupants concerning the Association;
- (l) obtain and carry insurance against casualties and liabilities as provided in the Declaration and pay the premium cost thereof;
- (m) keep books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and the vouchers accrediting the entries thereupon shall be available for examination by the Members and the holders, insurers, and guarantors of a Mortgage on any Unit, or their duly authorized agents, accountants or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the Members;
- (n) make available to any prospective purchaser of a Unit, any Member and the holders, insurers, and guarantors of a Mortgage on any Unit, current copies of the Declaration, the Articles, the By-Laws, rules governing the Units and the Common Areas and all other books, records and financial statements of the Association;
- (o) permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property;
- (p) issue, or to cause an appropriate officer to issue, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment; and
- (q) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at

any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote.

**Section 2. Management Agent.**

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (c), (d), (e), (i) and (k) of Section 1 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

**Section 3. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Area, the exterior and structural components of the Units and other property the Association has responsibility for without the approval of the Members of the Association; provided, however, the Board shall obtain approval of a majority of each class of Members for borrowings in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

**Section 4. Rights of the Association.** With respect to the Common Areas or other Association responsibilities owed, in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with condominiums, cooperatives or neighborhood and other homeowners or residents associations, both within and without the Property. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

**Section 5. Enforcement.** The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Member, and to suspend a Member's right to vote or to use the Common Areas for violation of any duty imposed under the Declaration, these By-Laws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, By-Laws or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association. The failure of the

Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) **Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board for a hearing, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) **Hearing.** If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board after hearing shall be final.

(c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

## ARTICLE VI

### OFFICERS

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Vice President shall be elected from among the members of the Board of Directors.

**Section 2. Election, Term of Office and Vacancies.** The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

**Section 3. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

**Section 4. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time 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.

**Section 5. Duties.** The duties of the officers are as follows:

(a) **President:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

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

(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 the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **Treasurer:** The Treasurer shall receive and deposit in appropriate accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at the regular annual meeting and deliver a copy of each to the Members.

ARTICLE VII

COMMITTEES

The Association shall appoint an architectural review committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

ARTICLE VIII

BOOKS AND RECORDS

**Section 1. Inspection by Members and Mortgagees.** The Declaration, By-Laws, membership register, books of account and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Member of the Association, or by his or her duly appointed representative, or by the holder, guarantor or insurer of any first mortgage secured by any Unit in the Project at any reasonable time and for any purpose reasonably related to his or her interest as a Member or in the Unit at the office of the Association or at such other place within the Property as the Board shall prescribe.

**Section 2. Rules for Inspection.** The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents requested.

**Section 3. Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

ARTICLE IX

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the

property against which the assessment is made. 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 eighteen percent (18%) per annum, and the Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area of abandonment of his Unit.

## ARTICLE X

### MISCELLANEOUS

**Section 1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**Section 2. Parliamentary Rules.** Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles, the Declaration or these By-Laws.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of North Carolina law, the Declaration, the Articles and these By-Laws, then the provisions of North Carolina law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

**Section 4. Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by the notice in writing to the Members pursuant to this Section.

## ARTICLE XI

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: COLE MILL TOWNES HOMEOWNERS ASSOCIATION, INC.

ARTICLE XII

AMENDMENTS

**Section 1.** These By-Laws may be amended, at a regular or special meeting of the Board of Directors, by a vote of a majority of a quorum of the Directors present in person or by proxy, subject to the provisions of Section 2, provided that such amendment has no adverse effect on the right of any Member. Otherwise, the By-Laws may be amended, at a regular or special meeting of the Members, only by a vote of a majority of a quorum of Members present in person or by proxy.

**Section 2.** Prior to the sale of the first Unit, Declarant, in its sole discretion, may amend these By-Laws. After such sale, the Declarant may amend these By-Laws so long as it still owns any portion of the property described in Exhibit A to the Declaration for development as part of the Property and so long as the amendment has no material adverse effect upon any right of any Member; thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Members representing a majority of the total votes of the Association, including a majority of votes other than votes of the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

**Section 3.** Any amendment must be recorded in the public records of Durham, County, North Carolina.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Cole Mill Townes Homeowners Association, Inc., a North Carolina nonprofit corporation; and

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 21<sup>ST</sup> day of AUGUST, 1997.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 21<sup>ST</sup> day of AUGUST, 1997.

Gloria L. Haywood  
Secretary

[SEAL]

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