

BOOK 2122 PAGE 01

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR PIRATES' COVE
SUBDIVISION, BOOK OF MAPS 1972,
PAGE 428, WAKE COUNTY REGISTRY

THIS DECLARATION, made on the date hereinafter set forth by WARD & WARD, INC.,
a North Carolina corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Cary Township, County
of Wake, State of North Carolina, which is more particularly described as:

Being all of Phase I as the same is shown on map of Pirates' Cove
recorded in Book of Maps 1972, page 428, Wake County
Registry.

ALSO, all of Lots 95, 96, 97, 98, 99 and 100 of Tanglewood Subdivision
as shown on map recorded in Book of Maps 1969, page 255, Wake County
Registry, whose owners elect on or before January 1, 1973 to be
included in the Properties, as that term is defined hereinafter, and
who execute and cause to be recorded in the Office of the Register of
Deeds of Wake County on or before the aforementioned date a written
acknowledgement of such election.

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

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

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Pirates' Cove Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Detached House Lot" shall mean and refer to any lot other than lots located in sections designated for townhouse construction.

Section 6. "Townhouse Lot" shall mean and refer to any lot located in an area designated for townhouse construction.

Section 7. "Lot in Use" shall mean and refer to any lot on which a dwelling unit has been fully constructed and occupied as a dwelling unit and it shall also mean any lot which has been conveyed by Declarant to a subsequent purchaser for a period of two years but which does not have a dwelling unit constructed thereon and occupied. In no event shall it mean a lot owned by the Declarant on which no dwelling unit has been constructed.

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

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Declarant" shall mean and refer to Ward & Ward, Inc. and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development.

Section 11. "Townhouse Section One" shall mean and refer to the area designated as "Townhouse Section One" as the same is shown on a map of Pirates' Cove recorded in Book of Maps 1972, page 428, Wake County Registry, which Section One lies within the boundary of the properties northeast of Lots 5, 6, 7, 18, 19, 31 and 33 as the same are shown on the aforementioned recorded map.

Section 12. "Townhouse Section Two" shall mean and refer to such area as is hereafter designated by Declarant as "Townhouse Section Two" and located within the boundaries of Phase II as the same is shown on a map of Pirates' Cove recorded in Book of Maps 1972, page 429, Wake County Registry. Notwithstanding any statement or inference herein to the contrary, no provision contained in this instrument shall be applicable to Phase II until Phase II (hereinafter defined) has been annexed.

Section 13. "Phase I" shall mean and refer to that portion of the Properties shown on the map of Pirates' Cove recorded in Book of Maps 1972, page 428, Wake County Registry.

Section 14. "Phase II" shall mean and refer to all of that portion of Pirates' Cove as shown on map recorded in Book of Maps 1972, page 429, Wake County Registry. Notwithstanding any statement or inference herein to the contrary, no provision contained in this instrument shall be applicable to Phase II until Phase II has been annexed.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting

shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within ten years from the date of incorporation of this Association, the Declarant should develop the area designated as Phase II on the map of Pirates' Cove Subdivision recorded in Book of Maps 1972, page 429, Wake County Registry, the lands within Phase II may be annexed to said Properties without the assent of Class A members, provided, however, the development of Phase II shall include amenities consisting of two tennis courts and open areas.

Section 3. If within ten years of the date of incorporation of this Association, the Declarant should develop additional lands, other than Phase II mentioned above, contiguous to Phase I or Phase II and consisting of not more than 100 acres, such additional lands may be annexed to said Properties without the assent of the Class A members, provided, however, the development of the additional lands described in this section shall include amenities equivalent in value (computed on the basis of ratio to the number of dwelling units being served) to those constructed on the Properties. (For example, if the number of dwelling units constructed on the additional lands which are annexed should be one-half the number of dwellings on the Properties, the value of the amenities constructed on account of the additional lands would be one-half the value of the amenities constructed on the Properties.)

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to

assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV
VOTING RIGHTS

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

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

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article II, Section 2 above.
- (b) on January 1, 1983.

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

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

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

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer and unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance;

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

(g) Notwithstanding anything in this instrument to the contrary, the Common Area of Townhouse Section One shall be for the exclusive use of the owners of dwelling units within Townhouse Section One. Notwithstanding anything in this instrument to the contrary, the Common Area of Townhouse Section Two shall be for the exclusive use of the owners of dwelling units within Townhouse Section Two.

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

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area of Phase I outside of Townhouse Section One to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first detached house lot in Phase I, except utility easements; that it will convey fee simple title to the Common Area of Phase I within Townhouse Section One, free and clear of all encumbrances and liens, prior to the conveyance of the first townhouse lot in Phase I, except utility easements; that it will convey fee simple title to the Common Area of Phase II outside of Townhouse Section Two to the Association free and clear of all encumbrances and liens prior to the conveyance of the first detached house lot in Phase II, except utility easements; and that it will convey fee simple title to the Common Area of Phase II within Townhouse Section Two, free and clear of all encumbrances and liens, prior to the conveyance of the first townhouse lot in Phase II, except utility easements.

Section 4. Parking Rights. Ownership of each Lot upon which a townhouse is constructed shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonable possible, together with the right of ingress and egress in and upon said

parking areas. The Association shall permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers, and other such items on the Common Area. No boats or trailers shall be parked within the right of way of any public street in or adjacent to Pirates' Cove Subdivision.

Section 5. TV Antennas, Cablevision and Piped-In Music. The Association may, in its discretion, provide one or more central television antennas for the convenience of the members and may supply piped-in music and/or cablevision and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot in Use owned within the Properties, hereby covenants and each Owner of any Lot In Use by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. All assessments relating to Common Areas other than the Common Areas located within Townhouse Sections shall be shared equally by the owners of each Lot. All assessments which relate to Common Areas within the Townhouse Sections and the maintenance of the exterior of townhouses shall be shared equally by the owners of each townhouse lot. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the

Properties, recreation, health, safety, and welfare of the residents in the Properties, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of those homes situated upon the Properties on which the Association is obligated to perform maintenance.

Section 3. Basis and Maximum of Annual Assessments. Until December 31, 1973, the maximum annual assessment shall be \$180.00 per Detached House Lot and shall be \$300.00 per Townhouse Lot.

(a) From and after December 31, 1973, the maximum annual assessments may be increased effective January 1 of each year without a vote of the membership in conformance with twice the rise of the Consumer Price Index (published by the Department of Labor, Washington, D.C.), or such Index as may succeed the Consumer Price Index, for the preceding month of July.

(b) From and after December 31, 1973, the maximum annual assessments may be increased above that established by the Consumer Price Index formula aforesaid by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums.

(d) So long as Ward & Ward, Inc. has a majority of the total of the Class A and Class B votes, Ward & Ward, Inc. will pay all expenses for the

maintenance and operation of the Common Areas to the extent that the annual assessments paid by the owners of lots in use are inadequate for this purpose, whereby at such time as the control of the Homeowners Association is no longer possessed by Ward & Ward, Inc., the Association shall have no debt for maintenance and operation of the Common Areas.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments relating to Common Area other than the Townhouse Common Area must be fixed at a uniform rate for all Lots in Use and may be collected on a monthly basis. Both annual and special assessments relating to Townhouse Common Area and the maintenance of the exterior of Townhouses must be fixed at a uniform rate for all Townhouse Lots and may be collected on a monthly basis.

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

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots in Use on the first day of the month following the conveyance of the Common Areas. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

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 homes upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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

Section 4. The owner of any Lot may construct, reconstruct or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty

(30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Townhouse Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior 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 Townhouse Lot and each Townhouse at all reasonable times to perform maintenance as provided in this Article. The owner of any Townhouse Lot may, at his election, plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Townhouse Lot owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year. The Owner of a Townhouse Lot shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future members of this Association, the developers wish to make it known that it is a part of the original plan of development to construct a variety of townhouses with a variety of exteriors for the good of the entire subdivision. Some townhouses will require far more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all members of the Association will be benefited by the variety of exteriors and,

therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each dwelling.)

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

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model townhouses used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

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

ARTICLE XI

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon,

over, under and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as fireplaces, overhanging eaves, gutters and downspouts and walls.

An easement is hereby established for the benefit of the Town of Cary over all common areas hereby or hereafter established for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires and collection of garbage.

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, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Exchange of Common Areas for other Portions of the Properties. Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may convey to the Declarant any portion of the Common Area theretofore conveyed to the Association in exchange for other portions of the Properties conveyed by the Declarant to the Association. Upon such conveyance, the area thus conveyed to the Declarant shall cease to be common area and shall cease to be subject to the provisions of these Covenants relating to the Common Areas, but the area thus conveyed to the Association shall become Common Area and subject to the provisions of these Covenants relating to Common Areas. (By way of

illustration, but not of limitation, suppose that due to a surveying error, an undesirable drainage area is designated for the location of Townhouse Lots. Such Townhouse Lots may be relocated within the Townhouse Common Area and the area designated for Townhouse Lots may be converted to Common Area by an exchange of deeds between the Declarant and the Association.

Section 4. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than the Owners of ninety (90%) of the Lots, and thereafter by an instrument signed by not less than the owners of seventy-five percent (75%) of the Lots.

Section 5. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

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

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF PIRATES' COVE SUBDIVISION

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By authority of its Board of Directors, Pirates' Cove Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Pirates' Cove Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Pirates' Cove Subdivision.

PIRATES' COVE HOMEOWNERS ASSOCIATION

ATTEST: BY _____ President
 _____ Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Pirates' Cove Subdivision.

Section 5. Declarant's Right to Amend Declaration with Approval of Veterans Administration or Department of Housing and Urban Development. In the event that the Declarant shall seek to obtain approval of these Covenants and the plan of development of the Properties in order that the lots and improvements constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD"), it is likely that HUD or VA or both will require changes in this Declaration in order to make the lots and improvements thereon eligible for VA and HUD loans. In such event, the Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration, evidence of approval of VA and/or HUD shall be attached to such amendment and recorded.

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Section 6. Protective Covenants for Detached House Lots. Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of Detached House Lots and the size and location of buildings thereon.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this 8th day of December, 1972, by authority of its Board of Directors.

WARD & WARD, INC.

BY

President

ATTEST:

Polly S. Ward
Secretary



NORTH CAROLINA

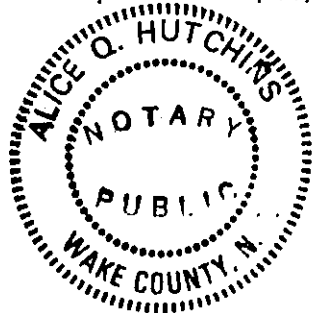
WAKE COUNTY

I, Alice Q. Hutchins, Notary Public, do hereby certify that Polly S. Ward personally came before me this day and acknowledged that she is Secretary of Ward & Ward, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its Secretary.

Witness my hand and notarial seal, this 8th day of December, 1972.

Alice Q. Hutchins
Notary Public

My commission expires: 10/18/75



NORTH CAROLINA--WAKE COUNTY

The foregoing certificate

— of Alice Q. Hutchins

Notary Public is
(If) certified to be correct. This instrument was presented for registration and recorded in this
office in Book 2122, Page 21,
This 8 day of Dec, 19 72, at 3:35 P. M.

By D. A. Rowland
Deputy Register of Deeds