

COVENANTS, CONDITIONS AND RESTRICTIONS - ARCADIA COMMUNITY

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE ARCADIA COMMUNITY

THIS DECLARATION, made on the date hereinafter set forth by the ARCADIA CORPORATION OF CARRBORO, a North Carolina Corporation, hereinafter referred to as "Declarant".

WITNESSETH THAT

WHEREAS, Declarant is the owner of certain Properties in Chapel Hill Township, County of Orange, State of North Carolina; and

WHEREAS, Declarant will convey lots from its said Properties subject to certain protective covenants, conditions, restrictions and easements as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described hereinafter shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and shall run with, the Properties and shall 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 Arcadia Homeowner's Association, Inc., its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including a Common House, Conservation Area, any recreational facilities, pool, pond, or other facilities which may be constructed upon the Properties, including all private roads, driveways not on individual Lots and emergency access lanes. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described with greater particularity on Exhibit B attached hereto and incorporated herein by this reference.

Section 5. "Limited Common Area" shall mean a portion of the Common Area reserved for the exclusive use of one of the Lots.

Section 6. "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 and rights-of-way which are offered for public dedication.

Section 7. "Member" shall mean and refer to any person or entity who holds membership in the Association.

Section 8. "Household" shall mean and refer to all individuals who will be sharing one Lot.

Section 9. "Declarant" shall mean and refer to Arcadia Corporation of Carrboro, a North Carolina Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### POLICY ON DISCRIMINATION

Arcadia Corporation of Carrboro and Arcadia Homeowners' Association, Inc. have a policy of non-discrimination and certifies that no persons shall be discriminated against in application to or participation in the Declarant or Association on the basis of race, national or ethnic origin, color, religion, age, disability, or affectional preference.

## ARTICLE III

### PROPERTY RIGHTS

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

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any Common Area by an Owner for any period during which any assessment against his/her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof to deed in trust the Common Area;

(d) 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 to transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by eighty-five percent (85%) of the members has been recorded; and

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section I above and Article X, any owner may delegate, in accordance with the By-Laws, his/her rights of use and enjoyment in and to the Common Area, to the members of his/her family, his/her lawful tenants, or contract purchasers who reside on such Owner's Lot and, to his/her guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drain facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities as shall be established by the Declarant or its predecessor 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 Area, such further easements as are requisite for the convenient use and enjoyment of the Properties.

The following specific easements are hereby established:

1) An easement is established for the benefit of the Declarant, its heirs and assigns, and all Lot Owners, for a 12" RCP storm drain running from a point 5' west and 5' south of the NW corner of Lot #20 to a point 5' west and 5' south of the NW corner of Lot #18, encroaching on the NW corner of Lots #20 and #19.

2) An easement is hereby established for the benefit of Duke Power Company, its heirs and assigns, for the running of an electric service line along the centerline of the 10' building setback (see Article VII, Section 2) of Lot #30.

3) An easement is hereby established for the benefit of Orange County, the Town of Carrboro and Orange Water and Sewer Authority over all Common Area hereby or hereafter established for the setting, removal, and reading of master water meters, the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires, collection of garbage and police protection.

Section 4. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of the Declarant, and all Owners of any Lot to be used for the purposes of ingress, egress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and the installation of driveways, sidewalks, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a lot by the Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefit of said easement, Declarant, or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designate or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its designate or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot. Anything in the foregoing to the contrary notwithstanding, Owner shall obtain the approval of the Association before commencing any construction as required in Article VII of this Declaration.

Sections 5. Foundation and Eave Extension Easements. Notwithstanding the building setbacks required in Article VII, Section 2 of this document, all Lot Owners do hereby grant and convey to the Owner of any adjoining Lot with a common Property Line an easement in perpetuity of thirty inches (30") along the entire length of the common Property Line for purpose of the construction and use of foundations, eaves, soffits, gutters, siding or any other functional or decorative appurtenance to any structure built in accordance with the Zero Lot Line regulations of the Town of Carrboro, so long as such construction and use shall comply with the Architectural Code governing Arcadia. Specifically excluded is the extension of any building wall into this easement. In addition, each Owner of a Lot granting this easement does hereby grant and convey an easement in perpetuity for reasonable ingress and egress across their Lot for purpose of the construction and maintenance of any use undertaken under the first easement. In addition, the Declarant and Association, to the degree that each may have an ownership interest in any Common Area, do hereby grant and convey in perpetuity to all Lot Owners these same said two easements for any common Property Line located between any Common Area and an individual Lot.

Section 6. Drainage Easement. An easement is hereby granted to allow drainage from gutters, perimeter drains and other surface-water collection devices to flow from individual Lots onto the Common Area. In addition, access is also granted to individual Lot Owners to the

Common Area for the installation and maintenance of any and all apparatuses necessary to accomplish said drainage, including piping, swales, rip-rap, etc. Said drainage apparatuses shall not encroach on any other Lot, except by Agreement in writing of the Owner of the affected Lot. In addition, all runoff from individual Lots must meet applicable jurisdictional regulations. Owners wishing to take advantage of this easement must submit a plan, in writing, according to Article VII, Section 1, below.

Section 7. Solar Access. Lot Owners shall not construct any structure or plant any evergreen which will affect another Lot's direct southerly solar access. Access is defined as direct southerly solar radiation on a Lot Owner's primary collection area between 10 AM and 2 PM on December 22. Any exceptions may be agreed to by the affected parties.

Section 8. 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 described on Exhibit B hereto to the Association, free and clear of all encumbrances and liens, except public streets, private roads or drives, utility easements and any restrictions of record prior to the conveyance of the first Lot.

Section 9. Utility Charges for Water and Street Lights. As consideration for the conveyance of the Common Area and as consideration for the rights, entitlements, and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water provided to and used in connection with any of the Common Area and by virtue of the use and operation of the street lights (or any other utility) installed and erected within the Common Areas. Such cost of fees, charges and expenses paid shall be charged ratably to the Owners as an assessment according to the provisions of Article V below.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The Association shall normally conduct its business by consensus, but when voting shall be required, voting rights shall be as follows. The Association shall have one class of voting membership, with one vote for each Lot. Each household shall decide how its vote shall be cast, but in no case shall any Lot have more than one vote. All voting shall take place in accordance with the By-Laws of the Association.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed 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 for capital improvements, such assessments to be established and collected as hereinafter provided, and (3) expansion assessments as described below. The annual, special and expansion assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Residents in the Properties and for the improvement and maintenance of the Common Area (including the perpetual maintenance of the private roads), any pond or pool, and for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, payment of utility charges on Common Area facilities, payment of insurance premiums for contracts of hazard and liability insurance on the Common Area and payment of local ad valorem taxes, if any, on the Common Area.

Section 3. Maximum Annual Assessment.

(a) Until January 1 of the year following the conveyance of the first Lot to an Owner, the maximum annual assessment, using the formula stated in Section 7 below, shall be based on \$22,968 for the entire community, were all 33 units completed. In addition, each household shall be required to perform four (4) hours of community work each month, as further outlined in the Common Area Maintenance Plan. Should any household fail or choose not to perform this work, an amount of \$10 per hour not contributed will be added to his or her monthly assessment. Collection of this assessment and the required work is abated for each individual Lot until such time as the house to be built on the Lot has received a certificate of occupancy and the Owner of record of the house has closed on the property. At the time of closing, however, an amount equivalent to two months' assessment will be collected by the Association to provide extra funds to meet unforeseen expenses/capital purchases before any capital reserve account has had time to accumulate adequate funds. These monies are not to be used by the Declarant to meet normal operating expenses during the build out of the project. It is further understood that neither the Declarant nor the Association shall be required to pay assessments on any undeveloped Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without consensus or a vote of the membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent

(5%) by consensus or, should consensus be blocked, by a vote of 85% of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(e) The Board of Directors may alter both the number of hours and the compensatory rate per hour for the required community work. The decision concerning this alteration shall be made at the same time each year as the assessment rate is determined, and may be altered even if the assessment rate is not changed.

(f) Any mortgagee who shall take possession of a Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall be responsible for all future assessments due on that Lot, including payment of the amount due for non-performance of community work, at the rate prevailing at the time of such possession. Should such possession continue unoccupied into a new rate period, calculation shall be on the basis of a one-adult household.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Declarant 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, including fixtures and personal property related thereto; provided however, any such assessment shall have the consensus of the Membership or, should consensus be blocked, the assent of 85% of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Expansion Assessments. Any Owner who shall expand the heated square footage of his/her house beyond its original configuration shall be subject to a one-time assessment for Common Facilities for that additional square footage. It shall be based at the same rate, with no interest accrual, had the space been built at the time of the original construction.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast fifty percent (50%) of all the votes of the 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. Rate of Assessment.

(a) Annual assessments shall be fixed according to the following formula: 1/2 of annual rate shall be fixed at a uniform rate for all Lots. 1/2 of the annual rate shall be fixed by calculation of the number of adults, aged 19 or older, in each household. For assessment

purposes, each household is defined as having at least one adult. The first adult in a household shall count as 1.0 adult, and all other adults shall count as 0.5. Calculation of the total number of adults in all households shall take place twice per year, on December 1 and June 1. An example of this calculation is attached hereto as Exhibit C.

(b) Special assessments shall be fixed at a uniform rate for all Lots.

(c) Annual assessments shall be due and payable and collected on a monthly basis. Collection rates for special and expansion assessments shall be determined by the Association and collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence and shall be due and payable as to all Lots on the first day of the month following the receipt by the Owner of a certificate of occupancy for his/her unit, and on the first day of any consecutive month thereafter. Such amount due and payable on the first day of each such month shall be equal to the monthly assessment as set forth and established pursuant to Sections 3 and 7 of this Article and Exhibit C attached herewith. 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 date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 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 twelve percent (12.0%) per annum and shall be subject to a late charge of Twenty Five and no/100 Dollars (\$25.00). The Association may record notice of such non-payment and lien in the Office of the Clerk of Superior Court of Orange County. The Association may bring action at law against the Owner personally obligated to pay the same for delinquent assessment, interest costs, late charges and reasonable attorney's fees of any such action, may file Notice of Lis Pendens, and/or may bring an action to foreclose the lien against the property. For purposes of this Section, the amount of delinquent assessment, plus accrued interest, shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. 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/her Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to the payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.



## ARTICLE VI

### INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the Common Area shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear. The Association may re-evaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property in the Common Area shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and other such risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the Common Area and the use and operation thereof with limits of liability thereof of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Authority, Veterans Administration or Federal National Mortgage Association. Such policies shall contain certain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bound by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least six (6) months' assessments plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owners as an assessment according to the provisions of Article V above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

## ARTICLE VII

### ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Required Approval. 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, including expansions of the initial residential structure or a material change in the exterior color of the residential structure, until the Plans and Specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, appearance and location in relation to surrounding structures and topography, and adherence to the Architectural Code, by the Board of Directors of the Corporation, or, after the dedication of the Common Area to the Association, by the Board of Directors of the Association, or the Architectural Review Committee. In the event such 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.

#### Section 2. Required Setbacks

(a) The following setbacks are established and are reflected on the subdivision plat recorded or to be recorded with the Orange County Register of Deeds:

There is hereby established a ten (10) foot building setback from the southern boundary line for Lots #2-5 inclusive and #30-33 inclusive.

(b) All specifications regarding fire-rated construction and percentage of openings allowed in walls along any and all common boundary lines must meet all codes and regulations applicable to the Town of Carrboro.

Section 3. Required Land Area. No Lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown upon any recorded subdivision map of the Properties.

Section 4. Utilities Easements. Declarant reserves an easement for and the right at any time in the future to grant a right-of-way and easement for the purposes of drainage, underground and above ground installation, repair and maintenance of poles, lines conduits, pipes and other equipment necessary to or useful in furnishing electric power, gas, sewer, telephone service, cable services and any other utilities for or to the Lots or Common Areas as may be shown upon any recorded subdivision map of the Properties.

Section 5. Water and Sewer Laterals. Each Lot shall be served by individual water and sewer laterals and in no case shall more than one Lot be served by the same water supply lateral from the main water distribution line or the same sewer collection lateral from the main sewer collection line. No water or sewer lateral shall cross any Lot other than that Lot being served by the lateral. All water and sewer laterals within each Lot will be the responsibility of the Lot Owner. All laterals between the Lot line and the water meter or sewer main will be the responsibility of the Association. Any individual flow meters installed will be the responsibility of the Association.

Section 6. Reservation of Variation. Declarant, and in turn the Association, reserve the right to grant a variance from and/or waiver of any violation of the requirements set forth above in Section 1 of this Article. Any request for such variance and/or waiver shall be made by the Owner requesting such in writing to the Declarant, Association, or the designated committee. The Declarant, Association or its designate shall have the sole right, authority and complete discretion to grant or deny any such request for any reason including aesthetics. In the event the Declarant, Association or its designate does not approve or deny such request within thirty (30) days from the date received, this right will be waived and any such request shall be deemed granted.

Section 7. Handicapped Access. All facilities constructed in the Common Areas shall be built using the Americans With Disabilities Act as a guide. Lot owners are encouraged (although not required) to construct their homes to provide for handicapped access to at least the first level.

Section 8. Carports. Lot owners along the east and west borders of the community may build carports according to the provisions of Section 1 above. For all others, a multi-car carport with storage capability will be built by the Declarant along one of the northernmost parking bays of the community. Construction of this carport shall be paid for by those who shall be using spaces in the carport. Ownership of the carport shall immediately inure to the Association. Persons paying for said construction may use the carport as Limited Common Area for a period of five (5) years without charge. After such time, space in the carport may be leased from the Association at a rate to be determined by the Board of Directors.

Section 9. Cooperative Maintenance of Common Facilities. All Common Areas and facilities shall be maintained by the Association in accordance with the Common Area Maintenance Plan of the Association. This Plan provides for some maintenance of the Common Areas by residents as a condition of participation in the Association. Residents agree to abide by the provisions of the Common Area Maintenance Plan.

Section 10. Driveways. All driveways shall be constructed within the provisions of Section 1 above.

Section. 11. Road Maintenance. Circadian Way, as recorded on the Arcadia Subdivision Plat, is a private road. It shall be constructed by the Declarant and maintained in perpetuity solely by the Association and shall never be dedicated to the Town of Carrboro. The Association shall collect and maintain through its assessment process sufficient funds for the ongoing maintenance and resurfacing of Circadian Way.

Section 12. Radio and Television Antennas. No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of any Lot or upon a structure thereon which shall exceed a height of four (4) feet above the highest point of the roof of the residential structure upon such Lot. In addition, no dish apparatus intended for the reception of cable communication transmission in excess of 24" in diameter shall be erected, placed or allowed to remain on any Lot where it may be viewed from any Common Area.

Section 13. Landscaping. The community will be responsible for the landscaping and maintenance of all Common Areas except for the following:

a) Homeowners may plant and remove vegetation on their own lots, and are encouraged to consult with their neighbors before planting or removal that will affect said neighbors. All other trees and vegetation located upon any Lot or Common Area shall be maintained in accordance with the requirements imposed by the Town of Carrboro; provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the Owner thereof. Plantings must not restrict movement along the pathways.

b) Excepting the areas set aside for garden plots, all vegetation on the Common Area is the concern of the entire community. No vegetation on the Common Area shall be planted, damaged, or removed (with the exception of poison ivy, poison oak and kudzu) without the prior approval of the Landscape Committee.

c) Homeowners may landscape along the inner pathways, including the paths between houses and including an area contiguous to their Lot as determined by the Landscape Committee. Each Lot's area will be determined by the Lot's Location and public visibility. Homeowners may use plants from a selected list including ground covers, ornamental grasses, shrubs, trees, perennials and annuals. Plantings on the easements will be restricted by OWASA and utility requirements. Plantings not on the list will need to be approved by the Landscape Committee.

Section 14. Erosion Control. During the period of lot grading and construction of the residential structure and during any future construction thereafter, each Owner shall exercise and maintain such erosion control measures, including the erection of silt fences, as may be required by the Declarant or Association in order to minimize erosion and runoff. Compliance with the applicable erosion control ordinance shall not constitute automatic approval by the Declarant or Association, and Declarant and Association reserve the right to impose requirements and standards in excess of those required by law.

## ARTICLE VIII

### PARTY WALLS

This Article shall apply only to those adjoining Lots within the Properties upon which a multiple residential structure is constructed upon each of such adjoining Lots and a wall dividing the portions of such structure as may be built on each adjoining Lot is built as a part of the original construction of such structure and placed on the common dividing line between such adjoining Lots.

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the residential structure upon the Properties and placed on the dividing lines between two (2) adjoining 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-grade construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. Walls shall observe the restrictions of Article VII, Section 2 above.

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

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 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. Reconstruction of Party Wall. The owner of any lot may reconstruct (subject to and within the limitation of architectural control and other limitations of this Declaration) with the right to go upon the adjoining Lot to the extent 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 as prevailed 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 negligence 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 Contributions Runs with Land. The right of any Owner to contributions 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 Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article VII, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Exterior and Roof Repairs. Subject to Article VII, Section 1, all repairs, maintenance replacement, and repainting relative to the roof or exterior surface of a multiple residential structure which an Owner wishes to accomplish shall be done only after such Owner notifies the Owner of the adjoining Lot upon which the other portion of such multiple residential

structure is constructed in writing as to what is proposed and gives such Owner an opportunity to participate therein.

Section 9. 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 through the Arbitration Committee of the Association, or failing that, by such process as provided by the laws of North Carolina then in effect relating to arbitration.

## ARTICLE IX

### POOL, POND AND SHOP RULES AND REGULATIONS

Section 1. Pool and Pond Use. Each Owner's use and enjoyment of any pool, pond and/or shop to be constructed upon the Properties and other adjoining Common Area shall be subject to the following provisions:

- (a) no motorized boats shall be allowed or permitted;
- (b) no boats may be stored or left unattended on the pond or upon any other Common Areas not designated for storage;
- (c) no net fishing, with the exception of minnow seines or nets, shall be allowed or permitted;
- (d) no dumping or discharge of any substance into the pool or pond shall be allowed or permitted;
- (e) the Association shall not be responsible for supervision of any activities or uses of or on or in the pool or pond or shop;
- (f) at all times when the pool or pond or shop is being utilized for any purpose by a member of his/her family, guest, invitee or licensee, the Owner shall be responsible for supervising such use, unless otherwise agreed to among the Owner and such members of his/her family, guest, invitee or licensee; and
- (g) except in cases of emergency, no spot light or search light shall be shone over or across the pond.

Section 2. Disclaimer and Standard of Liability. Neither the Association nor the Declarant assumes any responsibility for the method, manner or means by which any Owner, the members of his/her family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner shall use and enjoy the pool, pond and/or shop. Accordingly, neither the Association nor the Declarant shall be liable to any Owner, the members of his/her family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner except where physical injury to a natural person is proximately caused by the gross or wanton conduct of the Association or the Declarant, as the case may be. This disclaimer and standard of liability

shall be binding on the Association, the Declarant, all Owners, members of their families guests, invitees, tenants, contract purchasers and others acting through Owner. If this disclaimer and standard of liability should be held inapplicable to or not binding upon any class or sub-class of person referenced above by a court of competent jurisdiction, it shall nonetheless survive and remain in full force and effect as to all other classes or sub-classes. Nothing contained in this Section shall be deemed a waiver or modification of any common law or statutory defenses otherwise available to the Association or Declarant, including, but not limited to, contributory negligence. Any Owner whose conduct was a concurring or a proximate cause of any injury or damage for which the Association or Declarant is sued shall indemnify and hold the Association or Declarant, or both, harmless in the event the claim on behalf of any such person injured or damaged is reduced to judgment or otherwise paid by the Association or Declarant, or both.

Section 3. Other Rules and Regulations. Pursuant to Article III, the Association shall have the right to impose additional regulations for the use and enjoyment of any pool, pond, or shop constructed upon the Properties.

## 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 each Lot and the Common Area.

Section 2. Conservation Statement of Intent. It is the intention of the community to encourage the conservation of resources by the use of the most efficient materials and equipment available. These include the use of energy conserving construction, low-flow toilets, water restrictors on shower heads, etc. This also includes encouraging sustainable methods, systems and materials usable on an ongoing basis without excess resource depletion and without harming natural cycles.

Section 3. Participation in Community. It is intended that all persons, including renters, shall participate fully in the life of the community. All residents agree to abide by the Resident Participation Guidelines adopted by the Association.

Section 4. Solicitation. There shall be no solicitation for any organization or cause within the community by any non-resident.

#### Section 5. Use of Properties.

(a) No portion of the properties (except for a temporary office of the Declarant maintained for development purposes and the Common Area) shall be used except for residential purposes incidental or accessory thereto.

(b) Owners shall consult with neighbors and the Association in the placement of outside clotheslines to minimize the conflict that may arise with this issue.

(c) Any commercial use of any Lot must adhere to the "Home Occupancy" regulations of the Town of Carrboro. Nothing in this provision is intended to prevent the Association from imposing restrictions greater than those of the Town of Carrboro.

(d) All commercial signs on any Lot, with the exception of a "For Sale" or "For Rent" sign no more than six (6) square feet, shall be erected and maintained according to the "Home Office" Provisions of the Town of Carrboro. There shall be no personal signs or real estate "For Sale" or "For Rent" signs at the entrance of the community. Real estate signs shall be allowed at the individual Lot only.

(e) The Association prohibits the ownership of any unit in Arcadia solely for rental purposes. However, any Owner may Lease a room or rooms in their unit to housemates, caretakers or the like. In addition, any Owner may lease their entire unit during their temporary absence. All rentals in Arcadia shall be for periods in excess of 7 days. All owners shall provide the Association with a copy of any lease agreement between the Owner and any Lessee. (At the Owner's discretion, financial amounts noted in any such agreement may be obscured). In all cases, Lessees shall be bound by all other provisions of this Declaration as well.

(f) No house trailers shall be permitted on any Lot. Boats, trailers, campers, not including those attached to the body of a truck, or temporary buildings shall not be permitted on any Lot except in area where they cannot be viewed from the central court or perimeter streets. Boats up to fourteen (14) feet in length and campers attached to the body of a truck may be kept and stored in driveways. However, house trailers, temporary buildings and the like shall be permitted for construction purposes during construction period at any place deemed necessary for the construction of residential structures.

(g) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used. After the issuance of any Certificates of Occupancy, care shall be exercised to maintain all building areas as safe for children, including the construction of fences if necessary.

(h) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must be compatible in appearance and locale with the previously constructed residential structure. Any such screened enclosure must exceed in height by at least one (1) foot any such tank as may be placed therein.

Section 6. Motor Vehicles. No motor vehicles that are not functional and currently licensed may be parked or stored outside an enclosed building for more than thirty days within the community. No motorcycles, minibikes, trail bikes or other motor powered leisure vehicles



may be operated off designated roadways within any Common Area. Except for Lot #'s 1,2,3,4,5,29,30 and 31, one parking space shall be assigned to each Lot in a southern parking bay closest to the affected Lot. Residents may use a second parking space in any northern bay outside the enclosed carport mentioned in Article VII, Section 8. A separate lot shall be designated for guests and clients of residents.

Section 7. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of any Lot at locations where they can be viewed from any street or upon any portion of the central court.

Section 8. Animals and Pets. Household pets shall be welcomed into the community. All community members shall be bound by the Animal Control Ordinance of the Town of Carrboro. Community members shall also be bound by the Pet Constitution of the community, which may be stricter than the Town of Carrboro Ordinance.

Section 9. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot or upon the Common Area. Each Owner shall refrain from any act or use of his Lot which could reasonably cause annoyance or nuisance to the neighborhood. The use of gasoline leaf blowers and electric bug zappers is specifically prohibited. Noise producing mechanical systems shall be shielded to minimize noise pollution according to the regulations of the Association. In addition, other noise producing activities, including but not limited to, lawn mowers, power equipment, and loud shop use shall be restricted according the regulations of the Association. Each Owner shall keep and maintain his/her Lot in a neat, orderly and well-kept manner.

Section 10. Preservation of Natural Areas. In order for the natural, undeveloped areas of the community to remain in their most natural condition, residents agree to abide by the Natural Area Use Guidelines adopted by the Association.

Section 11. Environmental Control. In order to avoid placing hazardous or toxic wastes under living quarters and in the ground, the use of persistent herbicides or pesticides shall be prohibited upon any Lot or Common Area except as may be necessary as treatment for termites and other wood destroying insects and then only local treatment, not for general foundation treatment unless such general foundation treatment is required by the Town of Carrboro or a participating financing institution, shall be permitted or allowed. All houses shall be built with metal termite shields between all wood members and masonry or other foundation materials, and houses shall be built in such a manner that a visual inspection may ascertain with surety whether or not any termite presence has evaded the termite shields. No herbicide or pesticide may be used in Arcadia, except as required above in this section, other than those substances contained on an approved substances list compiled by a statewide organic certification program such as, but not limited to, the Carolina Farm Stewardship Association, or as contained on the National List, when adopted, developed by the National Organic Standards Board and promulgated by the US Secretary of Agriculture. Whenever possible, the least toxic method of control will be used

first, but spot use of non-persistent herbicides and pesticides is allowed if necessary to eradicate poison ivy, poison oak and kudzu.

Section 12. Guns and Other Weapons. The residents of Arcadia are working to create a safe and trusting community. Guns and other weapons are associated with great dangers. Therefore, any weapon brought into the community must meet Arcadia's substantial safety restrictions.

Section 13. Hunting. Regardless of governmentally designated seasons, there shall be no hunting on this property. In recognition that many invertebrate species are important to the functioning of the natural environment, as food supplies for larger species, and for human enjoyment of the land, no bug lights shall be used for the purpose of attracting flying insects, nor shall any pesticide or insect traps be used which are not capable of being targeted at particular populations or species dangerous or annoying to residents. However, wildlife clearly threatening or endangering residents may be controlled in any practical manner.

Section 14. Fire Hazards. Because of close proximity and obvious fire hazard, readily flammable materials shall not be allowed to accumulate, nor used for mulch or decoration, within three (3) feet of any flammable structure. Flammable liquids shall be kept only in approved containers. Fireproof storage for flammable liquids shall be provided in the workshop area of the common building. All containers for fires or sites for fires, including chimneys and grills shall be fitted with spark screens or other suitable means of fire control, except as follows in this section. There shall be no burning (including leaves and other vegetation) outside such proper containers unless a proper Forestry Service or other governmental agency permit is obtained first or the burning is done under the supervision of a professional crew or a fire department trained and knowledgeable in the method of outdoor burning. The burning of wood, coal, charcoal, gas, or oils in furnaces, grills, stoves, fireplaces, or other containers which are safely designed for the burning thereof is specifically allowed.

Section 15. Governmental Regulations. All state and local building, electrical, plumbing and mechanical codes, health regulations, zoning restrictions, permit procedures and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1 Enforcement and Validity. In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or By-Laws of the Declarant Corporation or the Association, the following relief shall be available:

(a) The Declarant, Association or any aggrieved Lot Owner or Owners within Arcadia on behalf of the Corporation or Association, or any Lot Owner on behalf of all the Lot Owners within Arcadia 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 provisions of this Declaration and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.

(b) The Declarant and Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

(c) If the violation is the nonpayment of any assessment provided herein, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Common Area for any period during which an assessment against the Lot remains unpaid.

(d) The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

(e) Failure by the Declarant, Association or 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.

(f) Prior to seeking any relief specified herein, the Declarant, Association or any Owner or Owners shall follow the conflict resolution procedures as set forth in the By-Laws.

(g) Should any provision of this document conflict with the By-Laws of the Declarant or the Association, then said By-Laws shall prevail.

Section 2. Severability. Invalidation 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. Amendment. The covenants, conditions and restrictions of this Declarations shall run with and bind the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Amendments to this Declaration shall be approved by consensus, or, failing this, may be amended during the first twenty (20) year period by an instrument approved by not less than eighty-five (85%) of the Lot Owners, and thereafter by an instrument approved by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Amendment Form. If any amendment to these covenants, conditions and restrictions is so approved, 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 validly approved by consensus of the Owners or, failing that, 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.

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

All amendments shall be effective from the date of their recordation in the Orange County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument 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.

Section 5. Annexation of Additional Properties. At any time during the effective term of this Declaration, Association may propose that the Association annex additional properties which have been or will be developed as a part of the general plan of development for Arcadia. Annexation of additional properties shall be decided by consensus, or, failing that, shall require the assent of eighty-five percent (85%) of the votes of the Membership of the Association at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or written proxies entitled to two-thirds (2/3) of the membership shall constitute a quorum. If the required quorum is not present 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 the same. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the membership are not present in person or by proxy, Members may give their written assent to the action taken thereat.

Section 6. Addition of Recreational Facilities. The Association shall not add any recreational facilities as amenities for the Association without first obtaining the consensus of the membership, or failing that, the written consent of 85% of the Members.

Section 7. Contract Rights of Association. Any contract entered into by or on behalf of the Association shall contain the provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than ninety (90) days written notice to the other party or parties.

Section 8. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments owed by the

Owner of the Lot on which it holds the mortgage.

- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action that requires the consent of a specified percentage of mortgage holders.
- (e) The Association's financial statement for the immediately preceding fiscal year.

Section 9. FHA/VA/FNMA Approval. In such cases where the following actions shall have any impact on the lenders' rights or privileges, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association: Annexation of additional properties, dedication of the Common Area, deeding in trust the Common Area, mergers and consolidations and amendments of a material nature to this Declaration. In addition, any amendment of a material nature to this document shall require assent by eligible mortgage holders who represent at least 51% of the votes of unit estates that are subject to mortgages held by eligible holders. A change to any of the provisions governing the following would be considered material and include but are not limited to: voting rights; increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; reduction in reserves for maintenance, repair and replacement of common elements; responsibility for maintenance and repairs; reallocation of interests in the general or limited common elements, or rights to their use; redefinition of any unit boundaries; convertibility of units into common elements or vice versa; expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project; hazard or fidelity insurance requirements; imposition of any restriction on the leasing of units; imposition of any restriction on a unit Owner's right to sell or transfer his or her unit; restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents.

Section 10. Termination of Legal Status. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs must be agreed upon by unit Owners who represent at least 85% of the total allocated votes in the Association and by eligible mortgage holders who represent at least 51% of the votes of the unit estates that are subject to mortgages held by the eligible holders. Termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property must be agreed to by mortgage holders that represent at least 67% of the votes of the mortgaged units.

Section 11. Implied Approval by Mortgage Holders. Required approval by any mortgage holder under this Article may be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within 30 days after it receives

proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

ARCADIA CORPORATION OF CARRBORO, a North Carolina Corporation

By: \_\_\_\_\_

(CORPORATE SEAL)                  President

Attest: \_\_\_\_\_

Secretary

(SEAL-STAMP)

NORTH CAROLINA, \_\_\_\_\_ COUNTY.

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_\_\_\_ he is Secretary of Arcadia Corporation of Carrboro, a North Carolina Corporation, and that by authority duly given and as an act of the Corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by \_\_\_\_\_ as its Secretary. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_