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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR THE LAFAYETTE HOMEOWNERS ASSOCIATION, INC.

CONTENTS

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR THE
LAFAYETTE HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by **PSW LLC**, a North Carolina Limited Liability Company (hereinafter "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of approximately 21.78 acres of land located in the City of Raleigh, Wake County, North Carolina, as more fully described on the map recorded in Book of Maps 2004, Page 351, Wake County Registry;

WHEREAS, Declarant desires to create on such property an exclusive residential community of detached single-family homes to be known as Lafayette Subdivision (hereinafter sometimes referred to as the "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area within the Subdivision, to provide for enforcement of covenants and restrictions applicable to the Subdivision and to provide a vehicle for ensuring that stormwater drainage systems and facilities within the Subdivision are properly maintained, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, the Lafayette Homeowners Association, Inc., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in **EXHIBIT A** to this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

Section 2. "Association" shall mean and refer to the **LAFAYETTE HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 5. "Common Area" or "Common Properties" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically open space lots, including the area within any private drainage easements and the Stormwater Control Measures constructed therein, including Stormwater Control Measures situated outside of the public streets, and which serve more than one Lot and are not maintained by any governmental authority. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a City of Raleigh (the "City") utility easement or a public street right-of-way. The Common Area shall be maintained by the Association, including, but not limited to the funding of the Stormwater Replacement Protection Easement and Access Maintenance Agreement Replacement Contribution (Replacement Contribution Agreement) with the City of Raleigh for the Stormwater Control Measures, or its successors in interest unless dedicated to public use and accepted by a public agency or authority as set forth herein. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Properties". All "Common Properties" are to be devoted to and intended for the common use and enjoyment of the Owners, subject to the fee schedules and operating rules adopted by the Association.

Section 6. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its Members;

(b) Expenses of the Common Area and administration, maintenance, repair, or replacement of the Common Area, including Stormwater Control Measures;

(c) Expenses declared to be Common Expenses by the provision of the Declaration or the Bylaws;

(d) Hazard, liability, property insurance, or such other insurance premiums as the Declaration or the By-laws may require the Association to purchase;

(e) Ad Valorem taxes and public assessments charges lawfully levied against Common Areas owned in fee;

(f) Expenses agreed by the Members to be Common Area of the Association;

(g) Utilities used in connection with the Common Area or by the Association;

(h) Unpaid assessments following the foreclosure of a first mortgage or first deed of trust;

(i) Payments to the City of Raleigh pursuant to the Replacement Contribution Agreement.

(j) Expenses related to maintaining the landscape island located in Passage Marseillie Court pursuant to an encroachment agreement with the City of Raleigh.

Section 7. "Declarant" shall mean and refer to **PSW LLC**, a North Carolina Limited Liability Company. It shall also mean and refer to any person, firm or corporation to whom or which PSW, LLC, shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 8. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

(a) December 31, 2008;

(b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however, that*, Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 3-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or

(c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 9. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 12. "Properties" shall mean and refer to the "Existing Property" described in **Exhibit A** to this Declaration and any additional property annexed pursuant said Article II.

Section 13. "Stormwater Control Measures" shall mean and refer to the dry detention ponds and grass swales located on the Property designed as private drainage easements on recorded plats of the Property, together with private drainage easements and all other storm drainage pipes, which serve the Property and are located outside public street rights-of-way (excluding those pipes and measures serving only a single Lot).

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE LAFAYETTE HOMEOWNERS ASSOCIATION, INC.

Section 1. Existing Property. The real property which is and shall be owned, held, transferred, sold, conveyed, mortgaged, used, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property. Additional properties may be annexed and thereby developed as a part of the general plan of development for Lafayette Homeowners Association, Inc., as follows:

(a) Additions by Declarant. At any time prior to December 31, 2008, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by the City of Raleigh and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

(b) Other Additions. Annexation of additional properties other than those described in Article II, Section 2 (a) above shall require the assent of two-thirds (2/3) of the votes of the Class A membership of the Association and two-thirds (2/3) of the votes of the Class B membership of the Association, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days not more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or off written proxies entitled to cast sixty-six and two-thirds percent (66 2/3%) of the votes of each class of 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 one-half (1/2) of the required quorum of the previous meeting. This provision shall continue to reduce the quorum by one-half (1/2) from that required at the previous meeting as previously reduced until such time as a quorum is present. . 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 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 consent to the action taken thereat.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 4. Density. The current zoning classification of the Properties is Rural Residential Conditional Use, which means that the maximum number of units per acre within the Subdivision without rezoning the property to another zoning classification is one dwelling unit per 40,000 square feet, but limited to 22-total building lots not including the area designated as open space, based on the total acreage of the Subdivision as set forth on Exhibit A hereto.

Additional lands adjoining the Properties consist of approximately 22.37 acres. Rezoning of these additional land to R-15 would allow one dwelling unit per 15,000 square feet, or sixty-four (64) total additional building lots, not including the area to be designated as open space, based upon the total acreage of the additional lands.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association 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. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to three (3) votes for each Lot that it owns (each a "Class B Lot").

Upon expiration of the Declarant Control Period, (Article I, Section 8 hereof), Declarant shall have one vote for each Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Lafayette

Homeowners Association, Inc., recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall furnish the Association a copy of any lease or sublease of his dwelling.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the provisions of the Raleigh City Code, the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to present evidence and notice of decision to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) 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 upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, cable, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another nonprofit corporation for the aforementioned purposes. Notwithstanding any other provision of this

Declaration, the Board of Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, provided that such exchange is approved by the City of Raleigh in accordance with Raleigh City Code section 10-3073(a)(2) as the same may be amended from time to time.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, as provided by and consistent with the provisions of Section 10-3073(a)(2) of the Raleigh City Code, as same may be amended from time to time, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision, including the first phase, to an Owner, it will convey to the Association title to those portions of the Common Area owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage and greenway easement and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, Declarant will, prior to the conveyance of the first Lot in any phase or section of the Subdivision to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area; or (6) place any impervious surface.

Except for private drainage easement, a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. Each Owner shall be responsible for maintaining the Common Area easement if located on his Lot, including mowing of existing grass and fertilizing the same. If an Owner of a Lot on which a Common Area easement lies fails to maintain the common area easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) maintain Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached hereto as Exhibit B and made a part of this Declaration; (iii) procure and maintain liability insurance in an amount of not less than one million dollars ($1,000,000.00) covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; (iv) procure and maintain hazard insurance on insurable improvements on the Common Area on a current replacement basis in an amount not less than one hundred percent (100%) of the insurable value: and (v) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made. It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to Section 12 of this Article V and Section 2 of Article IX of the Declaration shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to pay the Common Expenses and to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, Stormwater Control Measures which shall be maintained in accordance with Exhibit B, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (iv) payment of principal and interest on funds borrowed for Association purposes; and (v) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2004, the Maximum Annual Assessment shall be $900.00 for each Class A Lot and any Class B Lot for which a certificate of occupancy has been issued by the City of Raleigh.

(a) From and after January 1, 2005, the Maximum Annual Assessment for Class A Lots and any Class B Lot for which a certificate of occupancy has been issued by the City of Raleigh may be increased by the Board of Directors effective January 1 of each year as set forth in Section 4 below.

(b) Subject to the provisions of Section 4 of Article V the Maximum Annual Assessments for Lots may be increased without limitation if such increase is approved by not less than a majority of the votes cast appurtenant to each class of Lots present, in person or by proxy, at a meeting duly called for that purpose.

The provisions of this Section 3 of Article V shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in § 47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following conveyance of a vacant Lot to an Owner from the Declarant. An Owner who is conveyed a vacant Lot from the Declarant shall pay annual assessments at a rate of fifty percent (50%) of the regular annual assessment for the first six months of the ownership of a Lot and thereafter at the full annual assessment as determined in accordance with Article V, Section 3 above.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all classes of Lots and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than fifteen (15) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 90% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

<u>Section 5.</u> <u>Special Assessments</u>.

(a) <u>General</u>. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments 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, for repayment of indebtedness and interest thereon, or for any other purpose, <u>provided that</u> any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

(b) <u>Replacement Contribution Agreement Special Assessment</u>. Notwithstanding the requirements of Section 5(a) of this Article V, the Association, acting by and through the Board shall levy a Special Assessment for the purpose of funding any monetary obligations that the

Association may have to fund or replenish the funds in the replacement account established in accordance with the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution agreement by and among the Declarant, the Association, and the City of Raleigh recorded contemporaneously with this Declaration as a result of the withdrawal of funds from the account by the Association or the City. The Board may levy any such Special Assessment without the approval or consent of any Owner, Member, or any other party. The right of the Association to enforce its lien for payment of such Special Assessment may be exercised by either the Association or the City. The Association hereby assigns to the City, its rights to claim and enforce the lien for any Special Assessment levied pursuant to this Section 5(b) of Article V, who may act on behalf of the Association and shall have all of the rights of the Association, including those rights in Article V, with respect to any such Special Assessment levied hereby.

<u>Section 6</u>. <u>Notice of Quorum for any Action Authorized Under Sections 3(b) and 5</u>. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. This provision shall continue to reduce the quorum by one-half (1/2) from that required at the previous meeting, as previously reduced until such time as a quorum is present and business can be conducted.

<u>Section 7</u>. <u>Establishment of Liens</u>. Any and all Assessments made by the Association in accordance with the provisions of the Association Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees which are unpaid for a period of 30 days or longer, are hereby declared to be a charge and continuing lien upon each Lot, together with Interest thereon, including, but not limited to, Legal Fees, shall be the personal obligation of the contributing Owner of such contributing Lot. Said lien shall be effective only from and after the time of the recordation with the Clerk of Superior Court of Wake County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Provided, however, where an Institutional Mortgagee of record obtains title to a contributing Lot as a result of foreclosure of its first mortgage or first deed of trust or deed in lieu of foreclosure, such Institutional Mortgagee, its successors or assigns, shall not be liable for the share of Assessments pertaining to such contributing Lot or chargeable to the former contributing Owner thereof which became due prior to the acquisition of title as a

result of the foreclosure or deed in lieu thereof. Such unpaid Assessments shall be deemed to be Operating Expenses collectible from all contributing Owners, including such purchaser, its heirs, successors and assigns.

Section 8. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure 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 by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or first deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to the annual assessment for the appropriate Class A Lot in effect at the time of such sale or occupancy shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 12. Individual Expense Assessments. Individual Expense Assessments include any Assessment levied against Owner as result of such Owner's or any such members, guests, contractors, agents, and invitees use, damage, misuse, or treatment of the Common Area or Lots or such Person's failure to comply with the Association Documents, including, but not limited to, non-compliance of Dwellings and any other Improvements or personal property contained therein with the standards set forth in the Association Documents, or as adopted from time to time by the Association. The amount of the Individual Expense Assessment(s) shall be equal to the amount of any additional costs and expenses incurred by the Declarant or the Association which would not have been incurred if the Owner or the Owner's family members, guests, invitees, contractors, agents, or lessees and their family members, guests and invitees had been in compliance with the Association Documents, or had not damaged Common Area. No Individual Expense Assessment shall be levied without notice of and opportunity for a hearing before the Board. The Individual Expense Assessment and any late charges relating thereto shall be assessed and collected and enforced in the same manner as any other Assessments hereunder as provided herein. Individual Expense Assessments shall be in addition to and not part of any other Assessment, any such Individual Expense Assessment assessed against an Owner shall be paid by such Owner in addition to any other Assessment.

ARTICLE VI
RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another nonprofit corporation for the aforementioned purposes.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE VII
EASEMENTS

Section 1. Utility and Drainage Easements. Easements for the installation, maintenance and repair of sanitary sewer and Stormwater Control Measures are reserved as shown on the recorded plats. Within such easements, no structure, tree or shrub, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of such Lot, except for any such improvements for which a public authority or utility company, or the Association is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

Section 2. Drainage Easement. Easements are also reserved for the benefit of the Declarant, the Lafayette Homeowners Association, Inc. (the Association"), and the City of Raleigh (the "City"), and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the map referred to in Exhibit A as "Private Drainage Easement", or any variation thereof, for the purpose of installing, operating, maintaining, repairing and replacing stormwater drainage facilities and Stormwater Control Measures thereon. No building, structure, fill, embankment, fence, wall, driveway, planting, swing, animal pen or other obstruction shall be permitted in such area, other than those installed by the Declarant, the Association or the City, unless approved as provided in Article VIII of the Declaration and, if required, by the City. Within drainage easements, no Stormwater Control Measure, including berms, shall be removed or damaged by any Owner, his tenants, agents, family members and guests. Declarant reserves the right to create and impose additional easements or right-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 3. Sign Easement. Easements are also reserved for the benefit of the Declarant, the City of Raleigh, and the Association, and their respective successors and assigns, over, across and under those portions of Lots 1, 5, 6 and 13 shown and designated as "Sign Easement." on the map recorded in Book of Maps 2004, Page 351, Wake County Registry, for the purpose of installing, operating, repairing and maintaining landscaping and subdivision entrance signage, landscaping and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing set or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by the City.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Article.

Section 4. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and stormwater drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

Section 5. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water and sewer facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 6. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any part of a dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 7. Easement Over Common Area. A perpetual, nonexclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area and for the use thereof.

Section 8. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 9. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this

Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 10. Transit Easement. A transit easement has been granted to the City of Raleigh along Falls of Neuse Rd. on Lot 25 as shown on plat recorded in Book of Maps 2003, Page 1781 , Wake County Registry. The terms, conditions and rules governing this transit easement are more clearly defined and set forth on a separate instrument entitled "Transit Easement" executed by the owner of Lot 25 and recorded in the Wake County Registry.

Section 11. Sight Triangles. No wall, fence, foliage, berm, parked vehicle, sign or any other obstruction between two feet and eight feet tall above the curb line shall be placed in a sight triangle.

Section 12. Pedestrian Access Easement. A pedestrian access easement is reserved along the rear lot lines of Lots 19 and 20 to allow for pedestrian access, ingress, and egress to the Open Space areas referred to as Lots 23 and 24 of the recorded map. Within the pedestrian access easement, no building structure, embankment, fence, gate, planting, swing set, wall, animal pen or obstruction shall be permitted. The pedestrian access easement shall be kept free and clear of any debris, fallen tree limbs, and branches. The Association is hereby granted the right to remove, after thirty (30) days' written notice, all debris, obstructions and limbs and branches from the pedestrian access easement and charge the full cost to the Lot Owner.

ARTICLE VIII
ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall, mailbox or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof (including changing paint color, color of roof shingles, roof materials or siding) be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") nor any Lot subdivided until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the completed plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed $125.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. In the event Architectural Guidelines are promulgated or amended, a written copy of said Architectural Guidelines and amendments shall be mailed to the Owner(s) of each lot at least fifteen (15) days before such Guidelines or amendments become effective. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three (3) or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment Of Declarant's Rights. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, and no termination of Special Declarant Rights shall be deemed a termination or assignment of the rights reserved to Declarant in this Article VIII. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

Neither Declarant nor the Association, nor any officer, director, manager, member or employee of either, shall be liable for damages to any person by reason of mistaken judgment, negligence, or nonfeasance in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications and/or Improvements.

ARTICLE IX
ENFORCEMENT; NON-MONETARY DEFAULTS; ASSOCIATION REMEDIES

Section 1. Enforcement. The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Dwelling), the Association, the City (in accordance with applicable provisions of this Declaration) any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees. All rights, remedies and privileges granted to the parties entitled to enforce the covenants, restrictions and provisions of this Declaration pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude a party entitled to enforce the covenants, restrictions and provisions of this Declaration from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

Section 2. Non-Monetary Defaults. In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, subject to the provisions of Section D below, the Association may, at its option:

i. Impose a fine against the Owner or tenant as provided in this Article; and/or

ii. Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

iii. Commence an action to recover damages; and/or

iv. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, shall be assessed against the applicable Owner as an Individual Expense Assessment in accordance with Section 12 of Article V. The Association shall have a lien for any such Individual Expense Assessment and any interest, costs or expenses associated therewith, including Legal Fees incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records of Wake County.

Section 3. Fines. The amount of any fine shall be determined by the Board, and shall comply with the currently applicable provisions of the Planned Community Act. Notwithstanding the foregoing, if any violation of this Declaration or the rules and regulations is of a continuing nature, and if the Owner fails to cure any continuing violation with thirty (30) days after written notice of such violation, or if such violation is not capable of being cured within such thirty (30) day period, if the Owner fails to commence action reasonably necessary to cure the violation within such thirty (30) day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonable practical, a daily fine may be imposed until the violation is cured, subject to any limitations on the amount thereof provided for the in the Planned Community Act. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against an Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

Section 4. Notice and Opportunity for Hearing. Prior to imposing any fine or taking any action to enforce this Declaration as provided in Section 2 of this Article IX, the Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Owner of a leased Dwelling shall have the right to participate in any hearing involving the tenant of such Dwelling, and the Association shall provide notice to the Owner of such Dwelling concurrently with the Association's notice to the tenant of the subject Dwelling. The Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine or take such other action authorized by Section B above, as it deems appropriate by written notice to the Owner or tenant. If the Owner or tenant fails to attend the hearing as set by the Board, the Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Owner or tenant, and the applicable fine shall commence accruing as of the date of the hearing until the violation is actually corrected.

Section 5. Negligence. An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by the actions, negligence, or carelessness of the Owner, his agents or contractors, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Dwelling or the Common Area.

Section 6. Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees. To the extent otherwise provided by law, each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling, and for all contractors, guests and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Area, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Articles, or the Bylaws, by any resident of any Dwelling, or any contractor, guest or invitee of the Owner or any resident of a Dwelling, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if the violation was that of the Owner.

Section 7. Right of the Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any Dwelling or any portion of the Property other than an Owner and the members of his immediate family permanently residing with him in the Dwelling, if such person shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Area or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including Legal Fees, may be assessed against the applicable Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association. The Association shall provide notice to the Owner of a leased Dwelling concurrently with any notices sent to the tenant of such Dwelling pursuant to this Section, and such Owner shall have the right to participate in any hearings or eviction proceedings involving the tenant of such Owner's Dwelling. The right of eviction provided for in this section shall be inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein.

Section 8. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 9. Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

ARTICLE X
GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. Otherwise, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for the purpose of conforming this Declaration to the requirements of any governmental law or regulation. This Declaration may also be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article IX, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds of Wake County. No amendment shall be effective unless it has been approved, if required, by Section of this Article X by the City of Raleigh and is recorded in the office of the Register of Deeds of Wake County.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration:

annexation of additional properties, mortgaging of real property owned by the Association, deeding of Common Area to persons other than the Association (not including the granting of an easement or and exchanges permitted by Article IV, Section 1(c) hereof), and amendment of this Declaration.

Section 5. City Approval. No amendment of this Declaration of Covenants, Conditions and Restrictions for Lafayette Subdivision relating to Stormwater Control Measures, City assessments and replacement contribution funds shall be effective unless reviewed and approved in writing by the Raleigh City Attorney.

Section 6. Non-Liability of the City. The City of Raleigh shall not be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 7. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise, except with the consent of the Declarant and, if required, by the City of Raleigh.

Section 8. Declarant's Right To Change Development. With the approval of the City of Raleigh, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within the development.

Section 9. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than $1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a Common Expense paid from the annual assessments provided in Article V of this Declaration.

Section 10. Rules and Regulations. The Board of Directors shall have the authority to adopt and amend additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations or amendments become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to $150.00, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 11. Association Access. The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

Section 12. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements unless at least sixty-seven percent (67%) of the Members vote at such meeting against reconstruction, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house).

Section 13. Stormwater Control Measures. The Raleigh City Code requires stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the properties be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner to significant daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that at all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In addition, the Association shall perform operation maintenance and repair of the Stormwater Control Measures as set forth on Exhibit B. In the event that the Association neglects or fails to maintain, repair, replace, or reconstruct the Stormwater Control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the City of Raleigh. In the event that the Owner thereafter performs such maintenance, repair, replacement, or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot.

Section 14. Permanently Protected Undisturbed Open Space Areas. No land-disturbing activity, removal of vegetation, application of impervious surface, or construction or erecting any structure shall take place in Permanently Protected Undisturbed Open Space Areas without first obtaining a written permit from the City of Raleigh, including, but not limited to, a written watercourse buffer permit from the City of Raleigh Inspections Department.

Section 15. Natural Resource Buffer Yards. Pursuant to the zoning regulations for the Properties, a 70 foot wide Natural Resource Buffer Yard is required along the southern boundary of the Open Space of Lot 23 as shown on Book of Maps 2004, Page 351, Wake County Registry. Within natural resource buffer yards, no vegetation shall be removed without first obtaining a written permit from the City of Raleigh Inspections Department. Failure to comply with this permit requirement is a violation of the Raleigh City Code and will result in significant financial consequences.

Section 16. Special Highway Overlay District-I Yards. Pursuant to the zoning regulations for the Properties, a 50 foot wide Special Highway Overlay District-I Yard is required along the northern boundary of open space Lot 23. Within this yard no vegetation shall be removed without first obtaining a written permit from the City of Raleigh Inspections Department. Failure to comply with this permit requirement is a violation of the Raleigh City Code and will result in significant financial consequences.

Section 17. Cluster Unit Development. The real Properties are a part of a cluster unit development approved by the City in which residential density transfers are permitted; therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved withing the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing lots.

IN WITNESS WHEREOF, Declarant and other property owners have caused this instrument to be executed in its name by its duly authorized Officer or agent, as of the 15th day of March, 2004.

PSW LLC

By: W. Harold Perry
W. Harold Perry, Manager

STATE OF NORTH CAROLINA , COUNTY OF WAKE

I, J. Kenneth Edwards, a Notary Public for said County and State, certify that W. Harold Perry, Manager of PSW, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of the Limited Liability Company.

Witness my hand and official stamp or seal, this the 15th day of March, 2004.

J. Kenneth Edwards
Notary Public

My commission expires: 1-11-06

J. KENNETH EDWARDS
NOTARY
***
PUBLIC
WAKE COUNTY, N.C.

SUBORDINATION

The undersigned joins in this instrument for the sole purpose of subordinating its lien reflected in that Deed of Trust recorded at Book 10411, Page 1793, Wake County Registry (the "Deed of Trust") to this Declaration. This subordination is, however, expressly conditioned on the following:

(a) Notwithstanding the preceding sentence to the contrary, the lien of the Deed of Trust shall, in all respects, remain superior to any and all liens for assessments and any other liens provided for in this Declaration.

(b) The undersigned shall be deemed a "holder of a first deed of trust" for purposes of Article VI of the Declaration and shall be entitled to receive the notices provided for under Section 2 and to exercise the approval rights required under Section 3 of that Article.

This March 9, 2004.

FIRST INDIANA BANK, N.A.
a national banking association

By: ______________________
Robert D. Green, Vice President

BK010722PG02121

EXHIBIT A

Lying and being in the City of Raleigh, ____________ Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, approximately 21.78 acres, shown and described as Lots 1 -24, and all open space, rights of way and any other real property constituting a portion of the property depicted on that certain map entitled "LAFAYETTE SUBDIVISION", recorded in Book of Maps 2004, Page 351, Wake County Registry, to which plat reference is hereby made for a more particular description.

BOOK:010722 PAGE:02088 - 02122

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate___ of __________

J. Kenneth Edwards

________ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of ~~Deeds~~
By: Fredrick C. Bagmon Deputy
Assistant/Deputy ~~Register~~ of Deeds

This Customer Group
________ # of Time Stamps Needed

This Document
________ New Time Stamp
35 # of Pages

22.004-7/11/03