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LAURA M. RIDDICK REGISTER OF DEEDS WAKE COUNTY

Prepared by and Hold after Recording for: Robin M. Hammond, Attorney at Law

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NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ONE FIFTY ST. MARY'S, A TOWNHOME COMMUNITY

WAKE COUNTY

PRESENTED FOR REGISTRATION

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LAURA M. RIDDICK REGISTER OF DEEDS WAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth, by ST. MARY'S ASSOCIATES, LLC, a North Carolina limited liability company doing business in Wake County, North Carolina, (hereinafter the "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property, (hereinafter the "Property"), located in the City of Raleigh, County of Wake, State of North Carolina, more particularly described on the attached "Exhibit A" incorporated by reference as if fully set forth herein; and

WHEREAS, Declarant intends to develop on the Property a residential townhome community to be known as One Fifty St. Mary's; and

WHEREAS, Declarant proposes to subject the Property to this Declaration and the jurisdiction of the homeowners association, hereinafter described and hereinafter referred to as the "Association";

NOW, THEREFORE, Declarant hereby declares that all of the Property, including the Lots and Common Areas, are and shall be held, transferred, sold, conveyed, leased, mortgaged, occupied, used and otherwise disposed of subject to the following easements, restrictions, covenants, conditions charges and lien, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and One Fifty St. Mary's. These easements, restrictions, covenants, conditions, charges and liens shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

This Declaration of Covenants, Conditions and Restrictions is being rerecorded pursuant to G.S. 47-36.1 by the drafter of the original instrument to attach Exhibit A which was inadvertently left off.

This is the 8th day of January, 1999.

Robin M. Hammond, Attorney at Law

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ARTICLE I
DEFINITIONS

Unless the context shall prohibit or otherwise require, each of the following words or terms, whenever used herein with an initial capital letter, shall have the following meanings in this Declaration, the Articles, and Bylaws:

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

2. "Architectural Control Committee" shall mean the Architectural Control Committee appointed by the Board of Directors, pursuant to the Bylaws, or, in the absence of such Committee, the Board of Directors.

3. "Articles" shall mean the Articles of Incorporation for the Association, including any amendments thereto, filed with the Office of the North Carolina Secretary of State.

4. "Assessment" and "Special Assessment" shall mean an Owner's share of the Common Expenses assessed from time to time, against the Owner and his Lot by the Association in the manner herein provided.

5. "Association" shall mean and refer to One Fifty St. Mary's Homeowners Association, Inc., its successors and assigns.

6. "Board of Directors" or "Board" shall mean the Association's board of directors which is the governing body of the Association.

7. "Building" shall mean and refer to a multi-unit structure containing Townhomes, constructed or erected on the Property.

8. "Bylaws" shall mean the bylaws, from time to time adopted by the Association, to govern the Association's administration and operation.

9. "City" shall mean the City of Raleigh, North Carolina.

10. "City Attorney" shall mean City Attorney for the City of Raleigh, North Carolina, or his deputy.

11. "Code" shall mean the Code of Ordinances of the City of Raleigh, North Carolina.

12. "Common Area" shall mean all real property together with all amenities and equipment, fixtures and personal property located thereon owned or leased by the Association for the common use and enjoyment of all Members or designated classes of Members of the Association,

including but not limited to all land located within private streets (if any), open space, all water lines located outside of the public street rights-of-way and all sewer lines located outside of public street rights-of-way, or City of Raleigh sanitary sewer easements, except water and sewer lines located on any Lot, all storm water drainage easements, storm pipes, and facilities serving more than one Lot and not accepted for maintenance by any governmental unit.

13. "Common Expenses" shall mean and include:

(a) expenses for administration of the Association;

(b) expenses of administration, maintenance, repair, or replacement of the Common Areas and exterior maintenance of Townhomes and Lots as set forth in Article VIII.

(c) expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(d) hazard, liability and such other insurance premiums as this Declaration or the Bylaws may require the Association to purchase;

(e) ad valorem taxes and public assessments or charges lawfully levied against the Common Areas;

(f) expenses agreed upon by the Members to be common expenses of the Association; and

(g) unpaid Assessments resulting from the purchase of a Townhome at a foreclosure sale (such Assessment shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns), and all other expenses declared to be Common Expenses by the Members.

14. "Declarant" shall mean and refer to St. Mary's Associates, LLC, and any successor to or assignee of the rights, powers, and authorities of St. Mary's Associates, LLC as Declarant, hereunder, whether in or whole or in part.

15. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for One Fifty St. Mary's, a Townhome Community and all amendments thereto filed for record in the Office of the Register of Deeds of Wake County, North Carolina, as permitted hereunder.

16. "Institutional Lender" shall mean any bank, community financial institution, credit union, insurance company, Person, and other reputable mortgage lender and insurers of first mortgages.

17. "Lot" shall mean and refer to any numbered or lettered plot of land, as shown upon any recorded subdivision map of the Property, which is zoned and intended for residential use and on which a Townhome will be constructed. The term, Lot, specifically excludes any Common Area.

18. "Lot in Use" shall mean and refer to any Lot on which a Townhome has been fully constructed and for which a certificate of occupancy has been issued by the City. A Lot shall be a Lot in Use as of the first day of the month next following the day on which the certificate of occupancy has been issued for the Lot by the City.

19. "Member" shall mean and refer to every Owner of a Lot, including Declarant so long as it owns any Lot. No Owner shall have more than one membership per Lot.

20. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple or undivided fee simple interest in a Lot, as shown by the public records of Wake County, North Carolina, but excluding Persons having such interest merely as security for the performance of an obligation.

21. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, limited liability company or other legal entity.

22. "Plat" shall mean that subdivision plat, entitled "Survey for St. Mary's Associates, LLC" recorded in Book of Maps 1998, Page 997, Wake County Registry.

23. "Property" shall mean and refer to that certain real property more particularly described on Exhibit A, and any additional real property made subject to this Declaration pursuant to Article XII, hereof, together with all improvements which may at any time be located thereon.

24. "Townhome" shall mean and refer to a residential dwelling unit constructed upon a Lot, and constituting a part of a Building, including any garage or storage building, whether attached to the Building or unattached.

ARTICLE II
MEMBERSHIP

Every person or entity who is record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership in the Association is mandatory for each original purchaser and each successive Owner of a Lot. Membership in the Association is appurtenant to, and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. The Board may make reasonable rules relating to the proof of ownership of a Lot.

ARTICLE III
VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership (which shall be non-cumulative) as follows:

Class A. Class A Members shall be all those Owners as defined in Article II with the exception of the Declarant; the Declarant shall be a Class A Member following cessation of Class B membership. The Class A Member shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Fractional voting shall not be allowed.

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

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the properties without the consent of Class A Members on account of development of such additional lands by the Declarant, or

(b) January 1, 2005.

Section 2. The right of any Member to vote may be suspended by the Board for just cause pursuant to its Bylaws and according to the provisions of Article IV, Section 1(c) of this Declaration.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and a right and easement of ingress and egress over and through the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

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

(b) Subject to the ordinances of the City, the right of the Association to charge reasonable admission and other fees for the use of any of the Amenities;

(c) The right of the Association to suspend the voting rights and right to use of the Amenities by an Owner and his family, tenants and guests for any period during which an Assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations; however, suspension shall not restrict the right to use private streets and designated parking spaces;

(d) The right of the Association, in accordance with its Articles and Bylaws to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said the Property and the rights of such mortgagee in said Property shall be subordinate to the rights of the Owners hereunder;

(e) The Association shall be empowered and have the right to transfer Common Area to others on the condition that (i) the person or entity to whom such a transfer is consummated, exchanges or conveys back to the Association an equal amount of land area; and (ii) that said conveyance does not cause a violation of the requirements of the density of the Association and Common Area requirements as set forth by the Code; and (iii) that the conveyance is approved by the Planning Director of the City of Raleigh in accord with §10-3073 of the Code. In addition, the Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency authority or utility for such purpose and subject to such conditions as may be agreed to by the Members. No conveyance from the Association shall be effective unless: (i) an instrument signed by Members entitled to cast 60% of the votes of each class of membership has been recorded agreeing to such dedication or transfer; and (ii) written notice of the proposed action has been sent to every Member not less than 30 days nor more than 60 days in advance.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to his family, tenants, guests or invitees who reside on such Owner's Lot.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area located in One Fifty St. Mary's to the Association, in phases. Accordingly, Declarant hereby covenants for itself, its successors and assigns, that prior to the conveyance of any Lot, the Common Area which adjoins or serves said Lot shall be conveyed in fee simple to the Association, free and clear of all encumbrances and liens, except utility and drainage easements to government authorities.

Section 4. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of access, ingress and egress in and upon said parking areas. The Association shall regulate, and may prohibit, the parking of boats, campers, trailers, tractors, motor homes, commercial vehicles and the like on the Common Area, and when allowed, said vehicles shall be parked only in Common Area spaces designated by the Association. Furthermore, the repair or extraordinary maintenance of automobiles or other vehicles on Common Area is prohibited.

Section 5. TV Antennas, Cablevision, and Piped-In Music. The Association may, in its discretion, provide one or more central television antennas for the convenience of the Members and may supply or arrange for piped-in music and/or cablevision and the cost of these may be included in annual or Special Assessments.

ARTICLE V
EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for private streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cablevision and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

The Declarant reserves the right to subject the Property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot.

Section 2. Easements Appurtenant to Lots. All private streets shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed thirty-six (36) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 4. Structural Support. Every portion of a Townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 5. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome and that endangers any Building or portion of the Common Area.

Section 6. Easement for Governmental Agencies. An easement is hereby established over the Common Area and private streets, if any, for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 7. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any 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 his Townhome. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same conditions as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 8. Temporary Construction Easement. Subject to such reasonable rules and regulations as may be established by the Association for the protection of the Common Area, a temporary easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and each Owner to be used for the conduct of construction activities on a Lot or the Common Area, including the storage of construction materials. This easement shall be used only as and when necessary to facilitate the construction by Declarant or an Owner, of improvements on a Lot or the Common Area. In using and taking the benefits of this easement, Declarant or its agent, and Owners shall use their best efforts to minimize any land, improvements, or vegetation disturbance activities within the Common Area, and shall restore such land, improvements, and vegetation therein to as near the same condition as prevailed prior to such disturbance as is reasonably practicable. Should Declarant or its agent or an Owner fail to restore the disbursed Common Area as required herein, the Association may restore the land and vegetation to the required condition and Declarant, its agent or the responsible Owner, whichever is applicable, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. Where any Owner seeks to take advantage of the easement herein conveyed, such Owner's rights to use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

ARTICLE VI
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments or charges; (ii) Special Assessments for capital improvements; and (iii) Special Assessments for purchase and reconstruction of Townhomes as hereinafter provided.

Notwithstanding any provision herein to the contrary, the Assessment for each Lot which is not a Lot in Use shall be ten percent (10%) of the Assessment of a Lot in Use. Such Assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and Special Assessments, together with interest, costs and fines and reasonable attorney's fees incurred by the Association in connection therewith, shall be a charge and continuing lien upon the Lot against which such Assessment is made, and also the personal obligation of the Owner of the Lot at the time when such Assessment came due. The personal obligation of an Owner for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. All Assessments shall be shared equally by the Owners of each Lot, except as otherwise provided in this Section.

Section 2. Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing this Declaration and the rules of the Association; improving and maintaining the Property and the exterior of Townhomes and Lots as set forth in Article VIII, paying all Common Expenses; and

Section 3. Bases and Maximum of Annual Assessments. Through December 31, 1999, the maximum annual Assessment shall not be in excess of Twelve Hundred Dollars ($1,200.00) per Lot in Use, the exact amount of which shall be determined as provided in Subsection (c) of this Section 3.

(a) From and after December 31, 2000, the maximum annual Assessment may be increased effective January 1 of each year by the Board of Directors, without a vote of the membership, provided the increase is not more than ten percent (10%) above the maximum Assessment for the previous year.

(b) From and after December 31, 2000, the maximum annual Assessments may be increased by a percentage greater than ten percent (10%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a duly called special meeting for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting, although the amount of the proposed Assessment need not be stated. The presence at this meeting of Members entitled to cast, or proxies entitled to cast 30% of the votes of each class of Members shall constitute a quorum present or represented

(c) The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas <u>including private streets</u>, and such other areas and structures which the Association may be obligated to maintain. The reserve fund shall be funded out of annual Assessments for Common Expenses as provided for in this Article. In establishing the annual Assessment for any Assessment year, the Board of Directors shall consider (i) all current costs and expenses of the Association, including any accrued debts; and (ii) reserves for future needs.

(d) The Board of Directors may decrease the annual Assessment from time to time if in its opinion such decrease is prudent.

<u>Section 4. Special Assessments for Capital Improvements</u>. In addition to the annual Assessments authorized above, the Association may levy in any Assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting, although the amount of the proposed Assessment need not be stated.

<u>Section 5. Special Assessments for the Purchase and/or Reconstruction of Townhomes</u>. In the event that any Townhome located on the Property is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association, within <u>sixty (60)</u> days following destruction, of whether he intends to repair or reconstruct the Townhome; and if the Owner fails to

give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equal at least fifty percent (50%) of the appraised value of the improvements on the Lot before they were damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of one hundred twenty (120) days following notice of the Owner's election not to repair or reconstruct.

(a) Exercise of Option. The Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, real estate agents, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing, to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent and shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome.

If the Board determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within fourteen (14) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of each class of membership present and voting, the Board will be authorized to purchase and reconstruct the Townhome and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the Townhome. The Board of Directors may require that the Assessment be paid in a lump sum, in installments during an Assessment year, or over a period of two (2) or more Assessment years, as the Board , in its discretion, shall determine to be appropriate. Such an Assessment shall be in addition to, and not in lieu of, any other annual or Special Assessment provided for in this Declaration and levied by the Association.

(b) Determination of Value. The Owner of the Townhome shall convey marketable title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (½) of the fee of the third appraiser. If the Board of Directors and the Owner agree upon a single appraiser, each shall pay one-half (½) the cost of the appraisal.

(c) Application of Insurance Proceeds. The Owner of the Townhome, prior to conveyance to the Association, shall apply, or cause to be applied, so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances, and obligations upon the Lot. The purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family Townhome unit. The reconstructed or repaired Townhome unit, unless a change shall be approved by the Board , shall be a constructed in conformity with plans submitted to and approved by the Board prior to construction.

(e) Retention by Owner. If a Townhome is not habitable by reason of damage, and the Owner gives notice of his election to repair or reconstruct the Townhome, the obligation of the owner to pay annual Assessment installments shall not be suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within ninety (90) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the Owner, unless the Lot is thereafter acquired by the Association.

(f) Reconstruction by the Association. Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; provided, however, that only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase and/or reconstruction of the Townhome, and no other portion of the Property, including the Common Area and facilities, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase and/or reconstruction, and no Member shall be required to become personally obligated therefor.

The Association shall hold title to the Lot and improvements for the benefit of all Members. The Board of Directors may lease or sell the Lot and improvements upon such terms and conditions as it, in its sole discretion, deems most advantageous to the Members. The rental income shall be applied in the following order of priority: (i) to the payment of all rental costs and fees, if any, and all taxes, Assessments, liens, encumbrances and obligations on or secured by the Lot; (ii) to the maintenance, upkeep, and repair of the Townhome; (iii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and

(iv) to the Association's general operating fund for Common Expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (i) to the payment of all costs and fees from the sale, and all taxes, Assessments, liens, encumbrances, and obligations on or secured by the Lot; (ii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and (iii) to the Association's general operating fund for Common Expenses of the Association. Any payment or repayment to Members of the Special Assessment may be in cash or may be applied to the annual Assessment due or to become due.

(g) Application of Declaration and Bylaws. Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall continue to be subject to the provisions of this Declaration and to the Bylaws of the Association.

Section 6. Uniform Rate of Assessment. Annual and Special Assessments must be fixed at a uniform rate for all Lots and Lots in Use on a per Lot in Use basis, and may be collected monthly.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for herein shall commence for Lots in Use and Lots on the first day of the month following the date of the recording of the conveyance of all that portion of the Common Area which adjoins or serves said Lot in Use or Lot. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least 30 days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board . The Association shall, upon demand at any time, furnish a certification in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall incur a late charge of Twenty Five and No/100ths Dollars ($25.00) and shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may, as by law provided, file a lien against the Lot for all sums due, and foreclose on said lien; and also may bring an action at law against the Owner personally obligated to pay the same either for a money judgment without foreclosing or waiving the lien or for a deficiency money judgment following foreclosure, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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

Section 11. Fines. The Board may impose fines against any Lot for violation of this Declaration, the Articles or Bylaws. Fines shall be paid not later than thirty (30) days after notice of the levying of the fine. These fines shall not be construed to be exclusive remedies to which the Association may be otherwise legally entitled; however, any fine paid by an Owner shall be deducted from or offset against any damages that the Association may be otherwise entitled to recover from said Owner. For purposes of collection and in the sole discretion of the Board, fines may be treated as Assessments. The fines the Board of Directors may impose shall be as follows:

(a) first non-compliance or violation: a fine not to exceed Fifty Dollars ($50.00);

(b) second non-compliance or violation: a fine not to exceed One Hundred Dollars ($100.00); and

(c) third and subsequent non-compliance or violation or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars ($100.00) for each week of continued violation or non-compliance.

Section 12. Exempt Property. The following properties subject to this Declaration shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by a local public authority and (b) the Common Area. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 13. Two Months of Assessments to be Collected at Closing. At the closing of the sale of each Townhome by the Declarant, a sum shall be collected equal to one-sixth (1/6) of the current annual Assessment (i.e. two (2) months' Assessments) for such Townhome as a Lot in Use and such sum shall be paid into the general operating fund of the Association for purpose of insuring that the Association will have sufficient funds to meet unforeseen expenditures, and to acquire additional equipment or services deemed necessary or desirable. Such sum is a one-time additional Assessment and shall not be considered as an advance payment of regular annual Assessments. Additionally, in the sole discretion of the Board of Directors, upon the closing of the sale of any Townhome, a sum equal to two months' assessments shall be collected and paid into the general operating fund as provided for and for the purposes set forth hereinabove

ARTICLE VII
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Townhomes upon the Property and placed on the dividing lines between the Lots and all reconstruction or extensions of such walls, shall be governed by and subject to the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions, to the extent not inconsistent with this Article.

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

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any such Owner 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. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

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

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

Section 7. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article VII, request of the adjoining Owner(s) 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 charge; provided, however that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed, and such recital shall be binding as to third parties.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, such dispute shall be settled by arbitration pursuant to the laws of the State of North Carolina, relating to arbitration, as may then exist.

ARTICLE VIII
ARCHITECTURAL AND APPEARANCE CONTROL AND INSPECTION

The Board of Directors shall appoint an Architectural Control Committee consisting of at least three (3) Owners. No site preparation or construction, erection or installation of any exterior improvements, including but not limited to, a Townhome, outbuilding, sign, fence, screen (whether by vegetation or structures) outside lighting, walk, storm door, mail box, solar panel, window treatment, decorative lawn ornaments, number, name, sign or other structure or planting shall be constructed, erected, installed or planted upon any Lot or the exterior of the Townhome or any structure thereon until the completed plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and location with respect to topography and finished ground elevation, and other specifics thereof, shall have been submitted to, and approved in writing, by a majority of the Architectural Control Committee.

The Architectural Control Committee may refuse to approve any such exterior alterations or additions to a Lot unless such alterations or additions are in harmony with existing structures and improvements within One Fifty St. Mary's, as to style, shape, color and size. Moreover, the Architectural Control Committee shall not approve any plantings or the construction of fences, walls, screens, and other such structures if, in the opinion of a majority of the Architectural Control Committee such construction or planting constitutes an unreasonable obstruction of the view of another Owner or interferes with the exterior maintenance of the Townhome and/or any adjoining Townhome. In no event shall the Architectural Control Committee be required to approve a proposed alteration or addition even though it meets the criteria set forth herein.

In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final, accurate and complete form within thirty (30) days after its receipt thereof, such completed plans and specifications shall be deemed approved.

There is specifically reserved unto the Architectural Control Committee the right of entry and inspection upon any Lot for the purpose of determining whether the work being undertaken conforms with the approved plans and specifications, is in a good and workmanlike manner, and is of good quality materials.

The Association is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be allowed to recover all court costs, expenses and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgement negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

ARTICLE IX
EXTERIOR MAINTENANCE

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot and Townhome which is subject to Assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior window and door sills, frames and hardware, chimneys, any other exterior Building surfaces, trees, plantings, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, underground waterproofing, rear patios and steps or HVAC condensers or other mechanical systems. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

The Owner of any Lot may, at his election and at his own expense, plant and maintain trees, shrubs, flowers and grass in the enclosed portion of his rear yard, provided that such plantings and maintenance by the Owner do not hinder the Association in performing its maintenance of the exterior of the Townhome, the remaining yard spaces or the Common Area. No such plantings and maintenance by a Lot Owner shall reduce the Assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's planting and maintenance rights for a period not to exceed one year. The Owner of a Lot shall not plant any vegetation in the front yard except with the prior written approval of the Association.

In the event that the need for maintenance or repair or replacement is caused through the willful or negligent act of the Owner, his family, guests, invitees, tenants, contract purchasers or contractors; or is caused by defects in the original construction on the Lot, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, or for the purpose of correcting, repairing or alleviating any emergency condition provided for in Article V, Section 5 hereof (but only if such would normally be an expense of the Lot Owner), then in any such event the Association shall have the option to repair the property after seven (7) days written notice to the Owner. Funds to pay for the full cost of such maintenance or repairs or replacement shall be levied by Special Assessment which must be considered at a special meeting of the Members called for that purpose, upon not less than seven (7) nor more than fifteen (15) days written notice to Members. This Special Assessment must be approved by the affirmative vote of at least sixty six and two-thirds percent (66 and 2/3%) of each class of membership present and voting. However, the full amount of the Special Assessment shall be the Owner's sole responsibility; if the Owner does not repay to the Association the full amount of this Special Assessment, it shall become a lien and continuing charge on the Owner's Townhome in accordance with Article VI of this Declaration.

ARTICLE X
LOT USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors and the Architectural Control Committee shall, from time to time, formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area. Such rules and regulations, along with all policy resolutions and actions taken by the Board of Directors shall be recorded in the *Book of Rules, Regulations, and Resolutions* which shall be maintained in a place convenient to the Owners and available to them to inspect during normal business hours.

Section 2. Use. Each Building, Lot, Townhome and all Common Area shall be used subject to the following restrictions and to those set forth in the Bylaws, if any:

(a) All Buildings, each Townhome and the Common Area shall be used exclusively for single-family residential purposes, except for a temporary office of the Declarant and/or model used by Declarant or an Owner's home occupation as defined by the City's Code of Ordinances). For purposes of this Article, "single family" shall mean and refer to a group related by blood, marriage or adoption living together, or a group of not more than three (3) unrelated persons living together.

(b) No Owner shall locate upon a Lot an outside clothes lines, television or other communications antenna or satellite dish.

(c) A real estate "For Sale" or "For Rent"sign no larger than two (2) square feet may be placed on a Lot within public view without the Architectural Control Committee's approval and subject to the Code, Declarant may erect and maintain temporary signs for its temporary offices and for the marketing of the Lots and Townhomes in One Fifty St. Mary's. In addition, signs may be posted for safety and traffic control and Townhome address or identification numbers. The provisions of this subsection shall not be applicable to Institutional Lenders of any first mortgage which come into possession of any Townhome by reason of any remedies provided for in the mortgage, foreclosure of any mortgage or any deed of trust or other proceeding in lieu of foreclosure.

(d) No construction materials, equipment, machinery or any other thing used for construction purposes shall be stored on a Lot, except as may relate to construction on the Lot, and in no event may such materials remain on the Lot for longer than the length of time reasonably necessary to complete such construction.

(e) Nothing shall be kept, and no activity shall be carried on, within a Townhome or on a Lot or the Common Area, which will increase the rate of insurance for the Common Area or result in the cancellation of any such insurance, or which will be in violation of any law, ordinance, or regulation of any governmental unit, the Association or the Architectural Control Committee.

(f) All garbage receptacles, dumpsters, and other such containers shall be properly screened from public view except as may be otherwise required by law. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter or trash of any kind shall be permitted on any Lot, within any Townhome or upon the Common Area.

(g) No structure on the Lot, other than the Townhome, shall be used for human habitation, either temporarily or permanently.

(h) No inoperative vehicle, boat, trailer, camper or other recreational vehicle shall be regularly parked on a Lot except within a garage which is part of such Lot.

(i) Nothing shall be done in or to any Lot or Townhouse or the Common Area which will impair the structural integrity of any Building, Townhome or portion of the Common Area, or which would impair or alter the exterior of any Building or Townhome, except the exterior of a Townhome may be altered as provided for in this Declaration.

(j) The pursuit of hobbies or other activities which, in the sole discretion of the Board, tend to cause disorderly, unsafe, unsightly or unkempt conditions, shall not be permitted or undertaken on a Lot or in a Townhome.

(k) No waste of the Common Areas and facilities shall be permitted or committed.

(l) No Owner may lease his Townhome for less than a six (6) month term or for purposes of occupancy by other than a single family as defined above. No portion of any Townhome (other than the entire Townhome) may be leased and no transient tenants may be accommodated. Each lease shall be in writing on forms approved by the Association. Any Owner who leases his Townhome shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Association. Each such lease shall contain a provision to the effect that the rights of the tenant to use and occupy the Townhome shall be subject and subordinate in all respects to the provisions of this Declaration, to the Bylaws, and to such rules and regulations relating to the use of the Common Area as the Board may from time to time promulgate. Every lease shall contain a provision that failure of the tenant to comply with the terms of this Declaration and the Bylaws and rules and regulations shall constitute an incident of default under the lease. Failure to contain this language in the lease shall not waive the terms of this provision. The provisions of this subsection shall not apply to any Institutional Lender that comes into possession of any Townhome as a result of a foreclosure sale or as a result of any proceeding in lieu of foreclosure, or to any Townhome owned by Declarant.

(m) No noxious, offensive or loud activities shall be carried on upon any Lot or within any Townhome. Each Owner shall refrain from any act or use of the Lot or Townhome which could reasonably cause embarrassment, discomfort, annoyance, or become a nuisance to the residents of One Fifty St. Mary's.

(n) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Townhome or in the Common Areas. However, domestic household pets may be kept in a Townhome provided all governmental laws as well as all rules and regulations adopted by the Association concerning such pets are observed.

Section 3. Governmental Regulations. All governmental laws, rules, regulations and ordinances applicable to a Lot shall be observed, at all times, by the Owner. In the event of any conflict between any provision of such governmental laws, rules, regulations or ordinances, and any provision of this Declaration, the more restrictive shall prevail.

ARTICLE XI
RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. So long as any Institutional Lender shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by an independent Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year;

(b) to be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings;

(c) to be given notice of default in the payment of Assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing to the Association;

(d) to inspect the books and records of the Association during normal business hours;

(e) to be given notice by the Association of any substantial damage to any part of the Common Area; and

(f) to be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires any of the benefits of the provisions of this section, such Institutional Lender shall serve written notice of same upon the Association by registered or certified mail addressed to the Association and sent to its address identifying the Lot upon which any such Institutional Lender holds any mortgage or mortgages, or identifying any Lot owned by it, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it, and which notice shall designate the notice requested and where and to whose attention it is to be sent.

ARTICLE XII
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, and subject to the approval of the City, additional properties may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation, subject to the approval of the City Attorney. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly annexed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirements set forth herein and in the Articles and in the Bylaws, and the required quorum of such subsequent meeting shall be one-half (½) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the required two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant. If within six years from the date of incorporation of the Association, but in no event later than December 31, 2004, Declarant develops additional land located either contiguous to or across a public or private street from the property described in Exhibit A attached hereto, Declarant may, subject to the approval of the City Attorney, annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

Section 3. Conveyance of Common Area Properties. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot, Building or Townhome within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association, in accordance with Article IV, Section 3 of this Declaration, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is platted.

ARTICLE XIII
INSURANCE

Section 1. Common Area Policies. All insurance policies upon the Common Area shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear.

Section 2. Association Coverage. The Board shall procure and maintain public liability and property damage insurance insuring each Board member, the officers and the Association against any liability to the public or to Owners (and their invitees, tenants, agents and employees) arising out of or incident to the ownership and/or the use of the Common Areas, or such areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the right of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board , but in no event, shall be less than One Million Dollars ($1,000,000.00) per occurrence with regard to the Association and each individual director and officer. The Board of Directors shall also obtain such other insurance coverage as it determines, from time to time, to be desirable and reasonable including, without limitation, fire and other hazards insurance, with extended coverage endorsement, equal to the maximum insurable replacement value on the Common Area, any Townhome or other building owned by the Association. Premiums upon insurance policies obtained by the Board of Directors shall be a Common Expense.

In the event the Association becomes the Owner of any Buildings or other improvements, or personal property, located within the Common Areas or such other areas that the Association is responsible for, the Board shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to Buildings and properties similar in construction, location and use.

There shall also be obtained such other insurance coverage as the Board shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board shall be paid as a common expense of the Association.

<u>Section 3. Fidelity Bonds</u>. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of, or administered by, the Association. Where the Association has delegated some or all of its responsibility for the handling of funds to a management agent, fidelity bonds shall be required for such management agent's officers, employees and agents handling or otherwise responsible for funds belonging to or administered on behalf of the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three (3) months' aggregate Assessments on all Lots and Lots in Use plus reserve funds

Fidelity Bonds required herein shall:

(a) name the Association as an obligee;

(b) contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(c) provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any Institutional Lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.

Section 4. Proceeds. The proceeds of all contracts of insurance purchased by the Association shall be payable to the Board of Directors as insurance trustee under this Declaration.

Section 5. Owners' Coverage. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board , upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board of Directors, and the cost of such insurance shall be included in the annual Assessment of the Owner and shall constitute a lien against his Lot until paid. The maximum annual Assessment set forth in Article VI, Section 3, shall not bar the Association from including the cost of said insurance in the annual Assessment.

[Recommendation to Owners - If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent attached unit, there may be prolonged disputes between the insurance carriers of the adjacent damaged units (which may, in turn, delay the settlement of the claims) unless the insurance protection on both units is provided by the same carrier. It is therefore recommended that the Owners of all Townhomes located within the same Building purchase their fire and casualty insurance from the same insurance carrier.]

ARTICLE XIV
MERGER OR CONSOLIDATION

Upon a merger or consolidation of the Association with another organization, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowner's association or, alternatively, the properties, rights, and obligations of another homeowner's association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger, provided however, no such merger shall be effective until it is approved by the City Attorney. The surviving or consolidated homeowner's association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocations, changes or additions to the covenants and restrictions, as the same may be established in this Declaration or any subsequent amendment hereto, except as may be herein provided.

ARTICLE XV
GENERAL PROVISIONS

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

Section 2. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain interrupted traffic flow along all private streets within the Property. If it is necessary to erect "no parking" signs, street lights or other necessary traffic aides or to tow vehicles abandoned or improperly parked in order to accomplish this goal, this shall be done at the expense of the Association as a Common Expense.

In no case shall the City, City employees, emergency personnel or other agency which provides emergency or regular fire, police, sanitation or other public service to the Property, be responsible for failing to provide any such service to the property or any of its occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, security gates or any other factor within the control of the Declarant, the Association, or occupants.

Furthermore, the City, City employees, emergency personnel or other agencies providing emergency services are expressly permitted to remove or otherwise damage any security gate that may be erected, if necessary to provide emergency service, and on no account shall they be held liable for such damage, even if the damage occurred on a "false alarm".

In no case shall the City or State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 3. FHA/VA/FNMA Approval. Notwithstanding any provision of this instrument to the contrary, as long as there is a Class B membership and if Declarant desires to qualify sections of this development for Federal Housing Administration, Veterans Administration or Federal National Mortgage Association approval (but not otherwise) the following actions will require the prior approval of Federal Housing Administration, Veterans Administration or the Federal National

Mortgage Association, to wit; dedication of Common Areas, amendment of this Declaration, mergers and consolidations, mortgaging of Common Area, annexation of additional lands and dissolution.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and by the Owner of any Lot subject to this Declaration, his respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall automatically renew for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first 20 year period by an instrument signed by not less than the Owners of ninety percent (90%) of the Lots, and thereafter by an instrument signed by not less that the Owners of seventy-five percent (75%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of the Owners, to correct any obvious error or inconsistency in drafting, typing, or reproduction. Amendments shall not become effective until approved by the City Attorney (so long as this is required by the Code), or until the City Attorney, after twenty (20) days written notice, fails to comment on the amendment.

If any amendments to this Declaration are executed, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall, within 30 days, attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the name and manner that deeds are executed, and shall cause the amendment to be registered in the Office of the Register of Deeds for Wake County. All amendments shall be effective from the date of recordation in the Wake County Registry. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF ONE FIFTY ST. MARY'S

By authority of its Board of Directors, One Fifty St. Mary's Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by its Members and the Raleigh City Attorney, or his staff, and is, therefore, a valid amendment to the existing covenants, conditions, and restrictions of One Fifty St. Mary's.

This the _____ day of ______________________________, _______.

ONE FIFTY ST. MARY'S
HOMEOWNERS ASSOCIATION, INC.

BY:____________________________
President

(Corporate Seal)

ATTEST:

____
Secretary

Section 6. Prohibition Against Association Entering into Long Term Contracts while Declarant in Control of Board of Directors. Until such time as the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, or January 1, 2005, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time, upon not more than 60 days notice from the Association to the other party.

Section 7. Gender. As used herein, the masculine shall include the feminine and neuter genders as appropriate.

Section 8. Headings. Headings used herein are for convenience only and are in no way intended to define or limit the content hereof.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this the _____ day of _____________, 199_.

DECLARANT:
ST. MARY'S ASSOCIATES, LLC,
a North Carolina limited liability company.

BY: A Settle Dockery III (SEAL)
A. SETTLE DOCKERY, III
MEMBER-MANAGER

BY: G Smedes York (SEAL)
G. SMEDES YORK
MEMBER-MANAGER

BEING ALL OF THE MEMBER-MANAGERS OF ST. MARY'S ASSOCIATES, LLC.

NORTH CAROLINA
WAKE COUNTY

I, a Notary Public for said County and State aforesaid, do hereby certify that A. SETTLE DOCKERY, III personally appeared before me this day, who, being by me duly sworn, says that he is a Member-Manager of ST. MARY'S ASSOCIATES, LLC, a North Carolina limited liability company, that the foregoing and annexed instrument was signed and sealed by himself on behalf of said limited liability company by its authority duly given, and acknowledged to be the act and deed of the limited liability company.

Witness my hand and official stamp or seal, this the 2nd day of June, 1998.

Peggy N. Jones
Notary Public

My Commission Expires: 8/19/2001

Stamp/Seal

PEGGY N. JONES
NOTARY
PUBLIC
WAKE COUNTY, N.C.

BK 8225 PG 1442

BK ~~8075~~ PG 2330

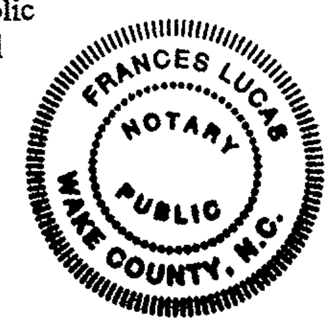
NORTH CAROLINA
WAKE COUNTY

I, a Notary Public for said County and State aforesaid, do hereby certify that G. SMEDES YORK personally appeared before me this day, who being by me duly sworn , says that he is a Member-Manager of ST. MARY'S ASSOCIATES, LLC, a North Carolina limited liability company, that the foregoing and annexed instrument was signed by himself on behalf of said limited liability company by its authority duly given, and acknowledged to the be the act and deed of the limited liability company.

Witness my hand and official stamp or seal this the 2nd day of June, 1998.

Frances Lucas
Notary Public
Stamp/Seal

My Commission Expires: 2/26/2000



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of
Peggy H. Jones
Frances Lucas Notar(y)(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 [signature]
Asst./Deputy Register of Deeds

EXHIBIT A
PROPERTY OF ST. MARY'S ASSOCIATES, LLC
150 St. Mary's Street, Raleigh, North Carolina 27603

BEGINNING at a point, an iron pipe set at the northeast corner of the intersection of Snow Avenue (50 foot right-of-way) and West Hargett Street (50 foot right-of-way); thence N 02° 44' 11" East a distance of 250.90 feet to an iron pipe set; thence S 87° 00' 52" E a distance of 94.34 feet to an existing iron pipe; thence S 87° 00' 52" E a distance of 95.99 feet to an existing iron pipe; thence S 87° 00' 52" E a distance of 49.15 feet to an existing iron pipe; thence S 87° 00' 52" E a distance of 59.90 feet to an existing iron pipe; thence S 87° 00' 52" E a distance of 113.54 feet to a point in the western right-of-way line of St. Mary's Street (80 foot right-of-way); thence along and with the western right-of-way line of St. Mary's Street, S 05° 31' 23" E a distance of 100.26 feet to a point, a common corner with the property now or formerly belonging to Colonial Dames of America, Book of Maps 1967, Page 166, Wake County Registry; thence N 87° 40' 21" W a distance of 83.79 feet to a point, a common corner with the property of said Colonial Dames of America; thence along and with the common line of the property of said Colonial Dames of America S 02° 21' 24" W a distance of 147.00 feet to a point in the northern right-of-way line of West Hargett Street; thence along and with the northern right-of-way line of West Hargett Street N 87° 38' 36" W a distance of 344.51 feet to the POINT AND PLACE OF BEGINNING, containing 2.14 acres or 93,250 square feet and being that same property shown on a survey prepared by John A. Edwards & Company, Consulting Engineers, entitled "Survey for St. Mary's Associates, L.L.C., dated April 2 1998, last revised April 27, 1998, reference to which is hereby made for a more complete and accurate description.