

FOR REGISTRATION REGISTER OF DEEDS
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2002 OCT 11 01:06:42 PM
BK: 3609 PG: 656-701 FEE: \$146.00
INSTRUMENT # 2002048363

~~Upon recording please return to:~~

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Cross References:	Deed Book:	3055
	Page:	547
	Deed Book:	3230
	Page:	1
	Deed Book	3156
	Page	659
	Deed Book	3156
	Page	663
	Deed Book	3173
	Page	885

AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS FOR AUBURN SQUARE TOWNHOMES

THIS AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF PROTECTIVE COVENANTS FOR AUBURN SQUARE TOWNHOMES ("Declaration") is made as of the date set forth below by C. Richard Dobson Builders, Inc. ("Declarant"), a Virginia corporation, with the consent of Auburn Owners Association, Inc., a North Carolina nonprofit corporation and the master association for the planned unit development known as Auburn ("Master Association").

WITNESSETH

WHEREAS, that certain Supplemental Declaration of Protective Covenants for Auburn Square Townhomes was recorded on April 17, 2001 in Deed Book 3055, Page 547, *et. seq.*, in the Office of the Register of Deeds of Durham County, North Carolina, and re-recorded on October 15, 2001 in Deed Book 3230, Page 1 ("Original Supplemental Declaration"); and

WHEREAS, the Original Supplemental Declaration has been previously amended by documents recorded in the Office of the Register of Deeds of Durham County, North Carolina as follows: First Amendment to the Supplemental Declaration of Protective Covenants for Auburn

Square Townhomes recorded on July 26, 2001 in Deed Book 3156, Page 659, *et. seq.*, Second Amendment to the Supplemental Declaration of Protective Covenants for Auburn Square Townhomes recorded on July 26, 2002 in Deed Book 3156, Page 663, *et. seq.*, and the Third Amendment to the Supplemental Declaration of Protective Covenants for Auburn Square Townhomes recorded on August 14, 2001 in Deed Book 3173, Page 885, *et. seq.*; and

WHEREAS, pursuant to the terms of Section 12.4 of the Original Supplemental Declaration, so long as Declarant has the right unilaterally to subject additional property to the Original Supplemental Declaration, Declarant may unilaterally amend the Original Supplemental Declaration for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners (as such terms are defined in the Original Supplemental Declaration) under the Original Supplemental Declaration, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner; and

WHEREAS, at the time of recording this Declaration, which is an amendment and restatement of the Original Supplemental Declaration, Declarant has the right unilaterally to subject additional property to the Original Supplemental Declaration; and

WHEREAS, the amendments to the Original Supplemental Declaration, as set forth in this Declaration, will not materially adversely affect the substantive rights of any Lot Owners nor will it adversely affect title to any Lot within the Community (as such term is defined in the Original Supplemental Declaration); and

WHEREAS, the Auburn Square Homeowners Association, Inc. has been or shall be dissolved pursuant to a Plan of Dissolution, adopted by the members of such association in accordance with the North Carolina Nonprofit Act; and

WHEREAS; as a condition of the dissolution of the Auburn Square Homeowners Association, Inc., the Master Association, as evidenced by its consent to this Declaration, will assume all responsibilities duties, and obligations under the Declaration, upon the filing of the Auburn Square Homeowners Association, Inc.'s articles of dissolution with the office of the North Carolina Secretary of State; and

WHEREAS, Declarant desires to amend and restate the Original Supplemental Declaration for the purpose of clarifying that the Auburn Square Homeowners Association, Inc. will be dissolved and the Master Association will be the entity responsible for the governance, maintenance, and enforcement of this Declaration in addition to the Master Declaration.

NOW, THEREFORE, the Original Supplemental Declaration and any amendments made to the Original Supplemental Declaration are hereby amended by striking those such documents in their entirety, except as otherwise specifically retained and incorporated into this Declaration by reference, and substituting in lieu thereof the following:

AMENDED AND RESTATED
SUPPLEMENTAL DECLARATION
OF
PROTECTIVE COVENANTS
FOR
AUBURN SQUARE TOWNHOMES

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**AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF PROTECTIVE
COVENANTS**

FOR

AUBURN SQUARE TOWNHOMES

THIS AMENDED AND RESTATED SUPPLEMENTAL DECLARATION (referred to as the "Declaration") is made on the day set forth on the signature page hereof by C. Richard Dobson Builders, Inc. ("Declarant") and consented to on the same day by Master Association (referred to through the remainder of this document as "Association").

The real property described on Exhibit "A" of this Declaration, and any additional real property and improvements which is made subject to this Declaration in the future as provided herein, including any improvements which may be (but are not required to be) constructed on such property, shall be subject to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, contained in this Declaration. The provisions of this Declaration shall run with the title to the property subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof. This Declaration shall be a "Supplemental Declaration" for a "Subdivision," as defined in the Master Declaration, as identified below.

1. Definitions

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- a. "Area of Common Responsibility" shall mean the Common Property, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.
- b. "Association" or "Master Association" shall mean the Auburn Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.
- c. "Auburn Square" means that certain real property, including the Community, subject to the terms of the Master Declaration, identified as "POD3" under the Master Declaration, and further described on Exhibit "A" as it may be amended or supplemented from time to time.

- d. **"Board of Directors" or "Board"** shall be the appointed or elected body, as applicable, serving as the Association's board of directors under North Carolina law. The Board shall be appointed or elected in accordance with the Master Association governing documents.
- e. **"Bylaws"** shall refer to the Bylaws of the Association.
- f. **"Common Property"** shall mean, if any, the real property, interests in real property, and personal property, easements, and other interests, together with improvements located on that property (if any) which are now or are hereafter owned by the Association for the common use and enjoyment of some or all of the Owners. Common Property shall include, without limitation, open space areas, private streets, the Disposal System, water lines that serve more than one Lot, sewer lines that serve more than one Lot or any sanitary sewer easement, storm drainage facilities and/or easements not maintained by any governmental entity.
- g. **"Community"** shall mean the real property and interests described on Exhibit "A" and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.
- h. **"Community-Wide Standard"** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Association's Board of Directors. Such determination must be consistent with the Community-Wide Standard originally established by the Declarant.
- i. **"Declarant"** shall mean that person or entity executing this Declaration as Declarant. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a deed filed with the Register of Deeds for Durham County, North Carolina.
- j. **"Declaration"** shall mean this Amended and Restated Supplemental Declaration of Protective Covenants for Auburn Square Townhomes, as it may be amended from time to time, including any Supplementary Declaration.
- k. **"Disposal System"** shall mean a wastewater system with pumps, waste-water treatment works, and/or disposal facilities constructed to provide sanitary sewage disposal for the Community. Such Disposal System shall be a portion of the Common Property.
- l. **"Master Declaration"** shall mean that certain Master Declaration of Covenants, Conditions, and Restrictions for Auburn recorded on March 29, 1999, in Book 2805, Page 249 in the Office of the Durham County Register of Deeds, and any amendments or supplements thereto.
- m. **"Master Governing Documents"** shall mean the Master Declaration and the Association's Articles of Incorporation and Bylaws.

- n. **"Lot"** shall mean any plot of land within the Community, whether or not improvements are constructed on that land, which constitutes or will constitute, after the construction of improvements, a townhome dwelling site as shown on a plat recorded in the land records of the county where the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, membership in the Association.
- o. **"Mortgage"** means any mortgage, security deed, deed of trust, or similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.
- p. **"Mortgagee"** shall mean the holder of a Mortgage.
- q. **"Occupant"** shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.
- r. **"Owner"** shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community; excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- s. **"Person"** means a natural person, corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- t. **"Supplementary Declaration"** means an amendment or supplement to this Declaration which imposes additional restrictions and obligations on the land described therein, or both.

2. Supplemental Declaration

- a. This Declaration is intended to supplement the Master Declaration as it applies to Auburn Square. Every Owner, by acceptance of an interest in any portion of the Community, acknowledges that he or she is subject to the Master Declaration in addition to this Declaration and is subject to the assessment obligations and lien rights set forth therein.
- b. In addition to all of the rights and obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Association will continue to exercise any rights conferred upon it under the Master Association Bylaws and its Articles of Incorporation.
- c. No property shall hereafter be made subject to this Declaration unless at the time it is made subject to this Declaration it is subject to the Master Declaration.

- d. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of the Master Declaration; however, in the event of conflict between or among the provisions of this Declaration and the Master Declaration, the provisions of the Master Declaration shall control. Notwithstanding the foregoing, the Association, at its sole option, may elect to enforce any provision of this Declaration which, in the Association's discretion (i) is more restrictive than the Master Declaration as to permitted uses, activities, and so on on the property subject hereto; (ii) increases the amount of any fine, assessment and so on due hereunder or under the Master Declaration; and/or (iii) is generally more stringent as to the requirements placed on any Owner or the restrictions placed on any of the property subject hereto.
3. Property Subject To This Declaration
- a. Property Subjected To This Declaration. The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit "A", as it may be amended and supplemented. Any Supplementary Declarations adding property to Exhibit "A" of the Original Supplemental Declaration are incorporated herein by reference.
 - b. Other Property. Only the real property described in Section 3(a) is made subject to this Declaration. However, Declarant may subject all or portions of additional real property described in Exhibit "B" by recording one or more Supplementary Declarations.
4. Association Membership and Voting Rights.
- a. Membership. Every Owner shall be deemed to have a membership in the Master Association and will have voting rights as described in the Master Declaration. In addition, Owners of a townhome Lot have certain voting rights with respect to issues that are particular to the Community. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights or use and enjoyment shall be as provided in the Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership are set forth in the Master governing Documents.
 - b. Voting. Owners shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. The Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

5. Assessments

- a. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots in Auburn Square, as may be authorized from time to time by the Board. The Association is hereby authorized to levy assessments against the Lots and the Owners for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplementary Declaration, the Articles, and the Bylaws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities, including but not limited to the Disposal System; taxes, if any, imposed on the Association or the Common Property; the cost of insurance; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations; expenses of the Architectural Review Committee; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain and enhance property values and marketability of Lots.
- b. Creation of the Lien and Personal Obligation for Assessments. Each Owner agrees to timely pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay reasonable fines as may be imposed in accordance with the terms of this Declaration.
- c. Late Charges. All assessments shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and costs, including without limitation, reasonable attorney's fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Lot Owner at the time the assessment fell due.
- d. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Lot Owner, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

- e. Certificate of Payment. The Association shall, within five (5) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments, other charges, and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association, the Board, and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.
- f. Annual Assessments. Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid through periodic payments, and the Board shall have the right to accelerate any unpaid installments of the annual assessment in the event an Owner is delinquent. Unless otherwise provided by the Board, the assessment shall be paid in one installment per year.
- g. Computation of Annual Assessments. The Board shall prepare a proposed budget covering the estimated costs of operating Auburn Square during the coming year, which may include a reserve. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than thirty (30) days after the mailing of the notice. The Board shall cause the proposed budget, the assessments, and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum, to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. Quorum need not be present at the meeting. The budget and the assessment shall become effective unless disapproved at such meeting by a vote of eligible Owners representing at least two thirds of the Lots in Auburn Square. In the event such Owners disapprove the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year.
- h. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by a vote of eligible Owners of at least two-thirds (2/3) of the Lots in Auburn Square unless such special assessment is authorized without a vote pursuant to the terms of this Declaration. A special assessment for costs of construction, repair, and maintenance of the Disposal System that exceed the Association's available funds and reserve fund may be levied without a vote of the Association's members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.
- i. Lien for Assessment. All sums assessed against any Lot, Owner, or member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association.

- j. Priority. The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage or deed to secure debt, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of Durham County, North Carolina. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the Association's lien for assessments in existence at that time or which arise in the future.
- k. Effect of Nonpayment of Assessment. Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. If the Assessment is not paid within thirty (30) days, a lien shall attach upon filing a claim of lien in the Office of the Register of Deeds for Durham County, North Carolina. The lien shall set forth the name and address of the Association, the name of the Lot Owner, a description of the Lot, and cover all assessments then due or which come due until the lien is canceled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid after thirty (30) days, the Association may institute suit to collect such amounts and foreclose its lien. The Association shall have the right to foreclose its lien by any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.
- l. No Set Off or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the Association's responsibility, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.
- m. Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.
- n. Date of Commencement of Assessments. Assessments shall start on the first day of the month following the conveyance of a Lot improved with a townhome dwelling which has received a certificate of occupancy to a Person for residential use. The conveyance of a Lot to a Person for the purpose of construction of a townhome shall not cause assessments to commence. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.
- o. Specific Assessment. The Board shall have the power to specifically assess pursuant to this Section as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the

Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

- i. Expenses of the Association, including overhead and administrative expenses, for additional services or maintenance activities which are made at the request of such Owner, the cost of which may be required to be paid in advance;
 - ii. Expenses of the Association which benefit less than all of the Lots, or which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and
 - iii. Expenses of the Association to bring any Lot into compliance with the Declaration or Community-Wide Standard, or costs incurred as a consequence of the conduct of the Owner or Occupants, such as the levy of a fine.
- p. Budget Deficits During Declarant Control. Declarant may (but shall not be required to):
- i. Advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association and the sum of the annual, special, and specific assessment collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt; or
 - ii. Cause the Association to borrow such amount, or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan; or
 - iii. Acquire property for, or provide services to, the Association relating to Auburn Square or the Common Property. Declarant shall designate the value of the property or the services provided and such amounts, at the request of the Declarant, be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

6. Maintenance and Conveyance of Common Property to Association

- a. Association's Responsibility for Common Property. The Association shall maintain in good repair the Common Property, including (without limitation) maintenance, repair, and replacement of all landscaping, Disposal Systems, and improvements situated on the Common Property. The Association shall also maintain all lakes, dams, spillways, and

overflow pipes on or about the Community or any lot thereon, to the extent maintenance is required and is not otherwise maintained by a governmental entity or third party.

- i. The Association shall maintain the Disposal System in conformity with all federal, state, and local laws and any permits relating to its construction, operation, repair, and maintenance for its systems and facilities. The Disposal Systems shall receive the highest priority for expenditures by the Association except for Federal, state, and local taxes and insurance. The Association's expenditures in connection with the Disposal System shall be common expenses.
- ii. The Association shall also maintain all entry features, parking areas, private streets, water lines that serve more than one Lot, and common areas or open spaces; street lights (if not maintained and operated by a governmental entity); the irrigation system (initially installed by Declarant) for the Community, if any, including the expenses for water and electricity, if any, provided to all such areas served by the irrigation system; and all storm water detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity). The responsibility for maintenance shall include the responsibility for operation, as applicable.
- ii. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit the Owners.
- iv. In the event that the Association determines that the need for maintenance, repair, or replacement of property described in (i) or (ii) above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs thereof shall be a specific assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration. Such Owner may request a hearing by the Board of Directors, or an adjudicatory panel appointed by the Board, to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small claims under North Carolina law. The hearing shall afford notice of the charge to the Owner, an opportunity for the Owner to be heard and to present evidence, and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.
- v. The maintenance shall be performed consistent with the Community-Wide Standard.

b. Association's Responsibility for Lots. The Association shall maintain in good repair the landscaping and exterior building surface materials, fixtures, and equipment attached thereto as specifically provided herein. All maintenance of Lots and dwellings which is not specifically assigned to the Association shall be the responsibility of the Owner.

i. The Association shall maintain all landscaping originally installed by the builder or by the Association. The Association's responsibilities with respect to maintenance of such landscaping shall be limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers and other plantings, and clean-up and removal of cuttings, trimmings, and dead plantings, from time to time as reasonably necessary or appropriate as determined in the Board's sole discretion. Lot Owners shall not alter such landscaping or landscaping equipment and shall not interfere with the Association's landscaping activities.

iii. The Association shall be responsible for cleaning, repairing, and repainting the exterior surface material of each townhome dwelling, including stucco, wood, and trim. Except for windows and doors, the Association shall maintain all exterior building surfaces, sheathing, and shingles within the Community. The Association shall maintain the sidewalks, landings, stoops, and overhangs to the dwellings. The Association shall maintain the exterior roofing surface (e.g., shingles, decking, and other surface roofing materials); provided, all other portions of the roof system, and any vents, fans, plumbing stacks, or other items attached to the roof and serving a single dwelling shall remain a part of the dwelling and be the maintenance responsibility of the Owner. Doors and windows, except for repainting the exterior surface and trim, shall be the Owners responsibility unless the Board determines otherwise.

iii. The Association shall have the right, but not the obligation, from time to time as determined by the Board, in its sole discretion, to make reasonable modifications to the arrangements for maintaining Lot landscaping and landscaping equipment, maintaining the exterior of dwellings, and obtaining and maintaining insurance as required herein.

The Association shall maintain all fences installed as original construction on the rear portion of the dwelling as well as the landscaping contained in the interior portion of such fenced area, so long as the Owner does not physically prohibit access to such fenced area. The Association shall have access to the fenced area to exercise the utility and maintenance easements further described in Sections 12(c) and (f), if necessary.

iv. The maintenance shall be performed consistent with the Community-Wide Standard

v. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such

damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the Association's responsibility. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

c. Owner's Responsibility. Except as provided in sub-sections (a) and (b) above, all other maintenance of the townhome and all other improvements on the Lot, including without limitation the items listed below, shall be the responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration:

- i. All doors and windows, including frames, sills, hardware, and screens;
- ii. All fixtures and equipment installed with a townhome dwelling commencing at a point where the utility line, pipe, wire, conduit, or system enter the exterior wall;
- iii. Any private utility system, component, or item outside of the exterior wall which serves a single townhome dwelling, including without limitation, air-conditioning compressors;
- iv. Any deck, patio, porch, balcony, or courtyard appurtenant to a townhome dwelling;
- v. Any landscaping or other item installed by the Owner to the building exterior (subject to approval of the Architectural Review Committee). Any additional landscaping planted by an Owner shall be maintained by such Owner and its successors at its expense; and
- vi. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the Owner's expense. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the

Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment.

- d. Conveyance of Common Property by Declarant or Auburn Square Homeowners Association, Inc. to Association. The Auburn Square Homeowners Association, Inc., prior to, or in association with, its dissolution, or Declarant may convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association as a common expense for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.
- e. Party Walls. Each wall which is built as a part of the original construction which serves as the dividing line between two (2) Lots and/or separates any two adjoining dwellings shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

7. Use Restrictions and Rules

- a. General. This Section sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a vote of eligible Owners representing at least two thirds of the Lots in Auburn Square.
- b. Residential Use. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on, in, or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes

consistent with applicable zoning so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance, and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities. The Declarant shall have the right to operate a sales office and a construction office from one or more Lots within the Community.

- c. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Except as provided above, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, color, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee. Architectural approval within Auburn Square is in addition to that required by the Association under the Master Declaration.
- i. The Architectural Review Committee may be established such that it is divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.
 - ii. The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.
 - iii. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, or to the "Architectural Review Committee" appointed under Article 8, Section 2 of the Master Declaration, which shall have full authority to act on behalf of the committee for all matters delegated.
 - iv. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.
 - v. So long as the Declarant owns any property for development or sale in the Community, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.
 - vi. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition,

or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

- vii. **Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.**
- viii. **Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who**

becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

- ix. Vehicles. Parking of any vehicles on streets or thoroughfares within the Community, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercrafts, trailers, or stored or inoperable vehicles is prohibited unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Property.

Any boat, motorhome, trailer, or recreational vehicle left upon any portion of the Community for longer than five consecutive days is subject to removal upon written notice from the Association and the cost of such removal shall be an assessment against the Owner responsible for such removed vehicle.

Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

- x. Off Road. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.
- xi. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.
- xii. Occupants Bound. All provisions of the Declaration, the Master Governing Documents, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.
- xiii. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other

usual and common household pets in reasonable number, as determined by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall be kept on a leash when outside of an owner's residence. No pet which has caused any damage or injury shall be walked in the community, whether on a leash or otherwise. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants must be removed by their owner upon request of the Board.

- xiv. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARC, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.
- xv. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.
- xvi. Antennas. No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least

conspicuous location on the Lot (generally being the rear of the Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community-Wide Standard and any design guidelines.

- xvii. Tree Removal. No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee. Notwithstanding all of the above, no consent or approval is required for the removal of any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence, a driveway, or the line formed by the highest normal pool elevation of any lake.
- xviii. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.
- xix. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.
- xx. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury material on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury material removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a "burn pit" during development and construction of the Community.
- xxi. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the

Community as to how the streets and common areas in the Community are laid out.

- xxii. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.
- xxiii. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property. Notwithstanding the foregoing, Owners may install "invisible fences" to contain pets in the rear yards with prior approval of the Architectural Review Committee.
- xxiv. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, and lines installed by or at the request of Declarant.
- xxv. Air-Conditioning Units. No window air conditioning units may be installed.
- xxvi. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) One (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) front house illumination of model homes.
- xxvii. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.
- xxviii. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.
- xxix. Swimming Pools and Hot Tubs. No swimming pool shall be constructed, erected, or maintained upon any Lot. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

- xxx. Gardens and Play Equipment. No vegetable garden, statuary, or play equipment (including, without limitation, basketball goals) shall be erected on any Lot without the prior written consent of the Architectural Review Committee. Any landscaping approved by the ARC and installed by an Owner shall be the maintenance responsibility of such Owner.
- xxxi. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.
- xxxii. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.
- xxxiii. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.
- xxxiv. Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.
- xxxv. Storage Sheds. Construction, installation, or placement of storage sheds or bins, either temporary or permanently, is not permitted.

8. Insurance and Casualty Losses

- a. Insurance on Common Property. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain and for the original construction of individually owned townhomes (excluding improvements and betterments made by Owners). This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts (excluding improvements and betterments made by Owners).
- b. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors' and officers' liability insurance coverage.

- c. Insurance Obtained by Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.
- d. Premiums. Premiums for all insurance shall be common expenses of the Owners of townhome Lots levied by the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
- e. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the Association's name, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:
- i. All policies shall be written with a company authorized to do business in North Carolina.
 - ii. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
 - iii. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
 - iv. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.
 - v. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;
 - (2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (3) That no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

- (4) That no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
 - (5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
 - (6) That no policy may be cancelled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.
- vi. In addition to the other insurance required by this Section, the Board shall obtain insurance in a manner consistent with the Master Governing Documents, including worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

f. Individual Insurance.

- i. Required Coverage. To the extent not insured by the Association as provided below, each Owner shall obtain and maintain in effect at all times: (1) property insured for the full replacement cost, less a reasonable deductible, of all insurable improvements on his or her Lot; and (2) insurance covering consequential damages to any other Lot or the Common Property due to occurrences originating within the Owner's Lot, caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within such Owner's Lot which causes damage to the Lots or the Common Property.

Within ten (10) days of any written request from the Board of Directors, each Owner shall file with the Association a certificate from the insurer evidencing the insurance coverage required hereunder and, if requested, a copy of the individual

policy or policies covering his or her Lot. Such Owner shall promptly notify the Board in writing in the event such policy is canceled.

Upon resolution of the Board and at least sixty (60) days' prior written notice to each Owner, the Association may, but shall not be required to, obtain as a common expense a blanket insurance policy providing property insurance coverage for all structures on Lots (exclusive of improvements made by Owners).

In such event, the Owners shall be relieved of their insurance responsibility hereunder to the extent such responsibility is assumed by the Association. Following such an assumption of insurance responsibility, the Association may, at any time upon not less than thirty (30) days' written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Lot required hereunder.

- ii. Repair and Reconstruction. Subject to Paragraph 8(b), in the event of damage to or destruction of any structures or improvements on the Lot, the Owner shall proceed promptly to repair, reconstruct, or replace the damaged structures or improvements in a manner consistent with their original condition or such other plans and specifications as are approved in accordance with the provisions of Section 6. The Owner shall pay any costs which are not covered by insurance proceeds.

g. Damage and Destruction -- Insured by Association.

- i. In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the Association's name, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.
- ii. Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the Association's name shall be repaired or reconstructed unless, within sixty (60) days after the casualty, eligible Owners representing at least seventy-five percent (75%) of the Lots in Auburn Square otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No

Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

- iii. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.
 - iv. In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.
- h. Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. In the event that the Owner fails to promptly commence and diligently pursue the repair or rebuilding of the property to the same condition as formerly, the Board may take whatever action is appropriate to repair and rebuild the property and the adjoining party walls and to levy a specific assessment without a vote. In the event that the Association exercises its remedies hereunder, the Association shall be entitled to receive and use any insurance proceeds payable under the Owner's policy required under sub-section (f).
- i. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

9. Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, eligible Owners representing at least seventy-five percent (75%) of the Lots in Auburn Square shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

10. Annexation of Additional Property

a. Unilateral Annexation By Declarant.

- i. The Declarant shall have the unilateral right, privilege, and option from time to time until five (5) years after the recording of the Original Supplemental Declaration to subject to the provisions of this Declaration ("Annexation") the following property:

- (1) All or any portion of the real property described in Exhibit "B,"
- (2) Any property which is adjacent to the property described on Exhibit "A,"
and
- (3) Any tract of land, of which any portion is located within a five (5) mile radius of the property described in Exhibit "A."

Annexation may be accomplished by filing for record in the Office of the Register of Deeds for Durham County, North Carolina a Supplementary Declaration describing the property being subjected.

Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property.

As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.

- ii. The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

- b. Other Annexation. Subject to the consent of the Owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property in the Community or has the right

to unilaterally annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of eligible Owners representing at least two-thirds (2/3) of the Lots in Auburn Square, the Association may annex real property to the provisions of this Declaration describing the property to be annexed. A Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

- c. Withdrawal. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property, for the purpose of removing any portion of the Community which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not unreasonably violate the overall scheme of development for the Community. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Property, the Association shall consent to such withdrawal.

11. Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Section apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

- a. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:
- i. Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
 - ii. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;
 - iii. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- b. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot

in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

- c. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.
- d. VA/HUD Approval. As long as Declarant owns property within Auburn Square for development and sale and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD"), or the U.S. Department of Veterans Affairs ("VA"), for insuring or guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA or HUD as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance pursuant to a plan of annexation previously approved by the VA or HUD as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.
- e. Applicability of Section. Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Section.
- f. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA subsequently delete any of their respective requirements which necessitate the provisions of this Section or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Section to be recorded to reflect such changes.

12. Easements

- a. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. This easement shall include, without limitation, eaves, roofs, gutters, bay windows, stoops, decks, steps, and walls. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

b. Easements for Use and Enjoyment.

- i. Every Lot Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:
- (1) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;
 - (2) The right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;
 - (3) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Property shall be subject to approval by eligible Owners representing at least two-thirds (2/3) of the Lots in Auburn Square (excluding votes held by the Declarant). Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;
 - (4) The right of the Association to dedicate or grant licenses, permits, or easements over, under, and through the Common Property to governmental entities for public purposes; and

- (5) The right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of eligible Owners representing at least two-thirds (2/3) of the Lots in Auburn Square, excluding votes held by the Declarant.
- ii. Delegation. Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.
- c. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.
- d. Easement for Drainage. Declarant hereby reserves a perpetual easement across the Community for the purpose of altering drainage and water across the Community for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.
- e. Easement for Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property, dwelling, or Lot within the Community to perform maintenance or other activities required by this Declaration and for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance

personnel, and similar emergency personnel in the performance of their respective duties.

Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard.

- f. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by, and at the expense of, the Person causing the damage.
- g. Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping, and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.
- h. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Master Governing Documents, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:
 - i. The right of access, ingress, and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;
 - ii. The right to tie into any portion of the Community with driveways, parking areas, and walkways;
 - iii. The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;

- iv. The right (but not the obligation) to construct recreational facilities on Common Property;
- v. The right to carry on sales and promotional activities in the Community;
- vi. The right to place direction and marketing signs on any portion of the Community, including any Lot or Common Property;
- vii. The right to construct and operate business offices, signs, store construction material, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities; and
- viii. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.
- i. Irrigation Easements. There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes, and other bodies of water located within the Community for irrigation purposes.
- j. High Water Easement. As to any Lot or Common Property which abuts or is appurtenant to any portion of any lake or stream which is located within the Community or is made available for the use of all Owners and Occupants in the Community, there is hereby reserved for the benefit of the Declarant and the Association an easement over that portion of the Lot or Common Property on which water from such lake or stream lies during times of high water, regardless of how such high water is caused. All Owners, by acceptance of a deed therefor, assume all risks associated with such high water and covenant not to make any claim or institute any action whatsoever (including claims or actions which could be brought through the Association) against any Person, including, without limitation, the Declarant or the Association as a result of such high water or any damage which may be caused thereby.
- k. Fence Easement. Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

- l. Adjacent Owner's Easement. The Owner of a Lot shall have a non-exclusive access and maintenance easement over the adjacent Lot(s) and Common Property to the extent reasonably necessary to perform maintenance and repair of his or her townhome. Exercise of this easement shall be done after reasonable notice and in an expeditious manner. Upon completion of the work, the easement holder shall restore the easement property to its prior condition to the extent reasonably practical.
 - m. Easement To Inspect and Right To Correct. Declarant reserves for itself and such other Persons as it may designate perpetual non-exclusive easements throughout the Community to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, or correcting any portion thereof, including dwellings and the Common Property. Declarant shall have the right to redesign or correct any part thereof. Entry onto a dwelling shall be after reasonable notice, except in an emergency. Any damage to a dwelling, Lot, or the Common Property resulting from the exercise of the easement or right of entry shall promptly be repaired by, and at the expense of, the Person exercising the easement right.
 - n. Easements under the Master Declaration. The easements set forth in this Section are in addition to, and not in lieu of, the easements created under or described in the Master Declaration.
13. General Provisions
- a. Enforcement. Each Owner and Occupant shall comply strictly with the Master Governing Documents, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Master Governing Documents, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association or in a proper case, by an aggrieved Owner. To determine fines and sanctions against Owners, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge, an opportunity to be heard and to present evidence, and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred and fifty dollars (\$150.00) for the violation and for each day after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien. If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such

notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

- b. **Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.
- c. **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law. If North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by eligible Owners representing at least 2/3 of the Lots in Auburn Square and the Declarant (if the Declarant still owns any property in the Community or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.
- d. **Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended:

- (1) For so long as the Declarant owns any property in the Community or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of eligible Owners representing at least two-thirds (2/3) of the Lots in Auburn Square;
 - (2) If the Declarant no longer owns any Property in the Community and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of eligible Owners representing at least two-thirds (2/3) of the Lots in Auburn Square.
- e. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.
- f. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.
- g. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.
- h. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.
- i. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.
- j. Indemnification. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every Association officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an

officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorney's fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

k. Books and Records.

- i. Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the Board and Committee members shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the Association's office or at such other reasonable place as the Board shall prescribe.
- ii. Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.
- iii. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.
1. Financial Review. A review of the Association's books and records shall be made annually in the manner as the Board may decide; provided, however, after having received the Board's financial statements regarding Auburn Square at a meeting of Auburn Square Owners, eligible Owners representing at least 51% of the Lots in Auburn Square, may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

- m. **Notice of Sale, Lease, or Acquisition.** In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.
- n. **Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in the Community, or has the right to unilaterally annex additional property to the Community) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.
- o. **Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the Master Governing Documents, , any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in these governing documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of these governing documents, or any other civil claim or action. However, this Declaration shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its members. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards of the business judgment rule.

- p. **Safety and Security.** Each Owner and Occupant of a dwelling, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection

or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all Occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including dwellings and the contents of dwellings, resulting from acts of third parties.

14. Variances

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

15. Capitalization of Association.

Upon acquisition of record title to a Lot by the first Owner other than Declarant or a builder, a contribution of \$ ("Initiation Fee") shall be made by or on behalf of the purchaser to the working capital of the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee shall be deposited into an account of the Association and disbursed from that account (a) \$200.00 for expenses and costs of the Association in accordance with the Declaration, as amended, (b) \$60.00 shall be held by the Association as a long term maintenance reserve to be disbursed by the Association for maintenance of any property within Auburn Square which the Association is required or permitted to maintain, in its sole discretion. The Initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of a Lot once paid.

The Association shall keep these funds in a separate account to be used to benefit property within Auburn Square. Initiation fees collected under the Original Supplemental Declaration shall be transferred to the Association and kept in the manner prescribed above.

16. Administration.

The administration of the Board shall be done in accordance with the Bylaws. Meetings called for the benefit of Owners of townhome Lots and all notice requirements shall be accomplished in a manner consistent with the Bylaws and North Carolina law.

IN WITNESS WHEREOF, the Declarant and the Association hereby execute this Amended and Restated Declaration under seal this 1 day of Sept, 2002.

Declarant: C. Richard Dobson Builders, Inc., a Virginia corporation

By: [Signature]
Its: Stephen Leach-V.P.

Attest: [Signature]
Its: Asst. Secretary

[AFFIX CORPORATE SEAL]

Signed, sealed, and delivered
this 1 day of Sept,
2002, in the presence of:

[Signature]
Witness
[Signature]
Witness



STATE OF NORTH CAROLINA

COUNTY OF Wake

This 1 day of Sept, 2002, personally came before me, Jackie Swymer, Notary Public for the County and State, Stephen Leach who being by me duly sworn, says that he is of C. Richard Dobson Builders, Inc., a Virginia corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Stephen Leach acknowledged the said writing to be the act and deed of said corporation.

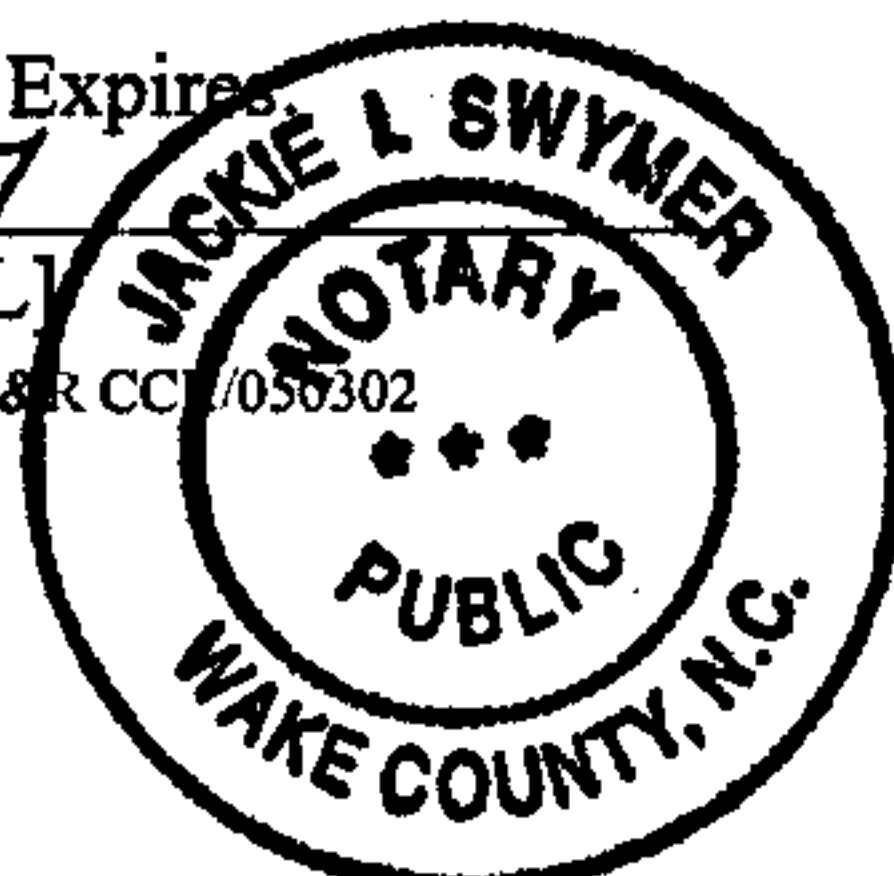
Witness my hand and official seal, this the 1 day of Sept, 2002.

[Signature]
Notary Public

My Commission Expires
8.16.07

[NOTARY SEAL]

6012-6/Auburn Square/A&R CC/050302

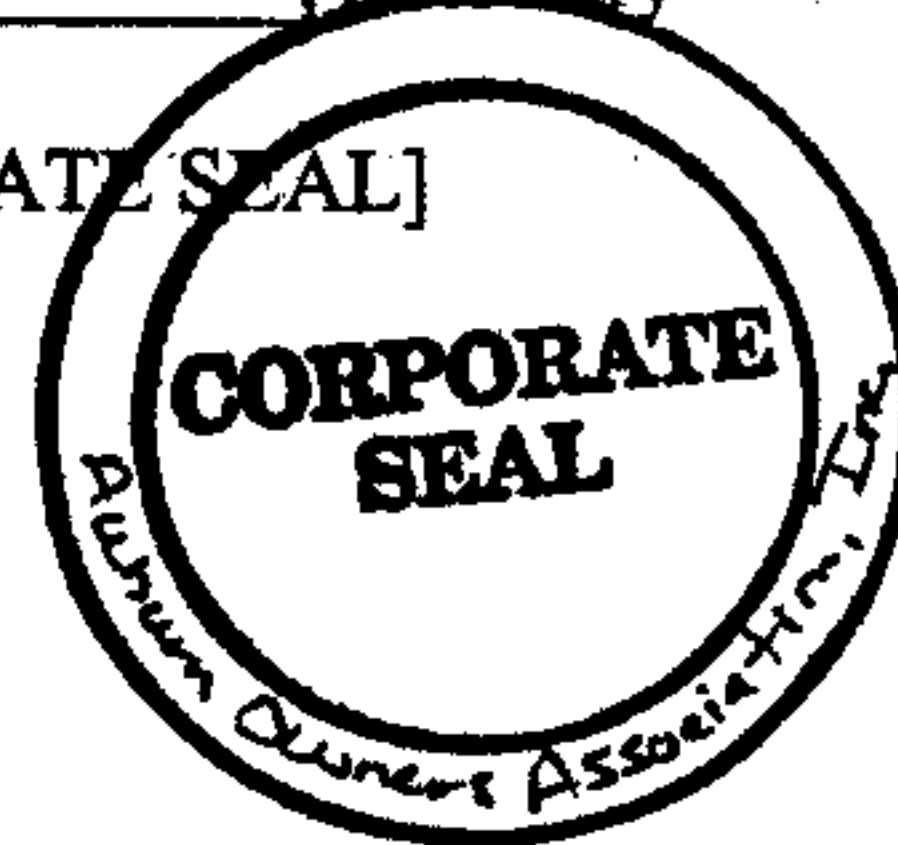


Association: Auburn Owners Association, Inc., a North Carolina nonprofit corporation

By: [Signature]
Its: _____ President

Attest: W. L.
Its: _____ Secretary

[AFFIX CORPORATE SEAL]



Signed, sealed, and delivered
this 20th day of August,
2002, in the presence of:

W. L.
Witness

Frank E. Davis
Witness

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

This 20th day of August, 2002, personally came before me, Shawn Meacham Notary Public for the County and State, Melissa W. Coleman who being by me duly sworn, says that he is of Auburn Owners Association, Inc., a North Carolina corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Secretary acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal, this the 20th day of August, 2002.

Shawn Meacham
Notary Public

My Commission Expires:

04/26/2003

[NOTARY SEAL]

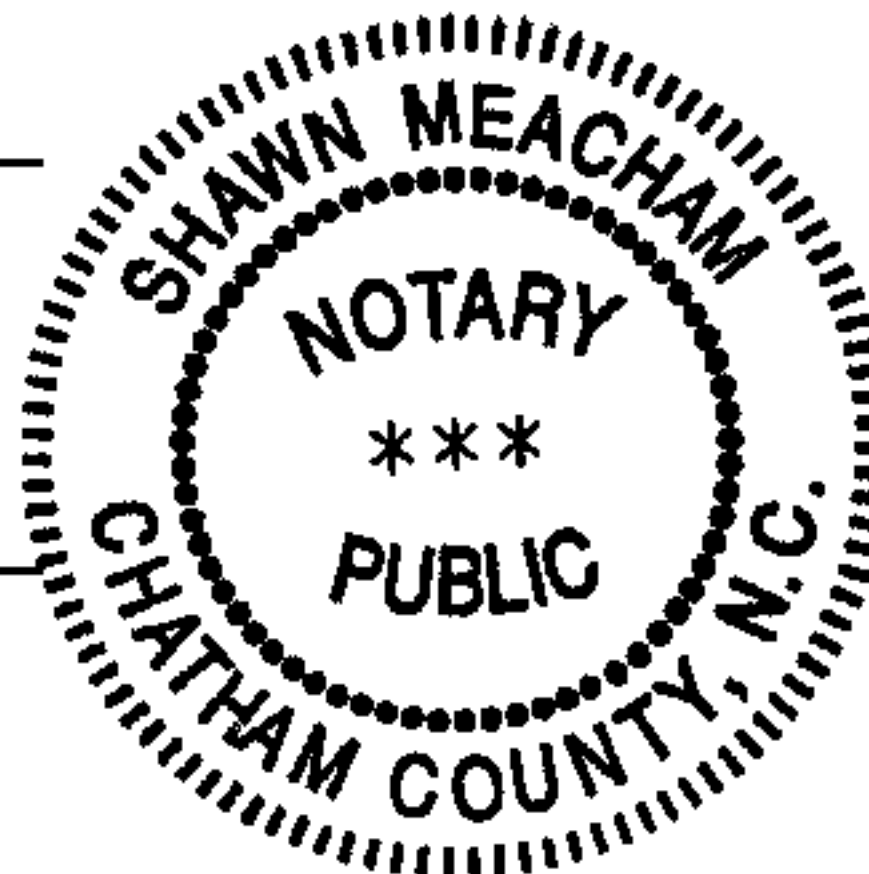


Exhibit "A" - Property Subject to this Declaration

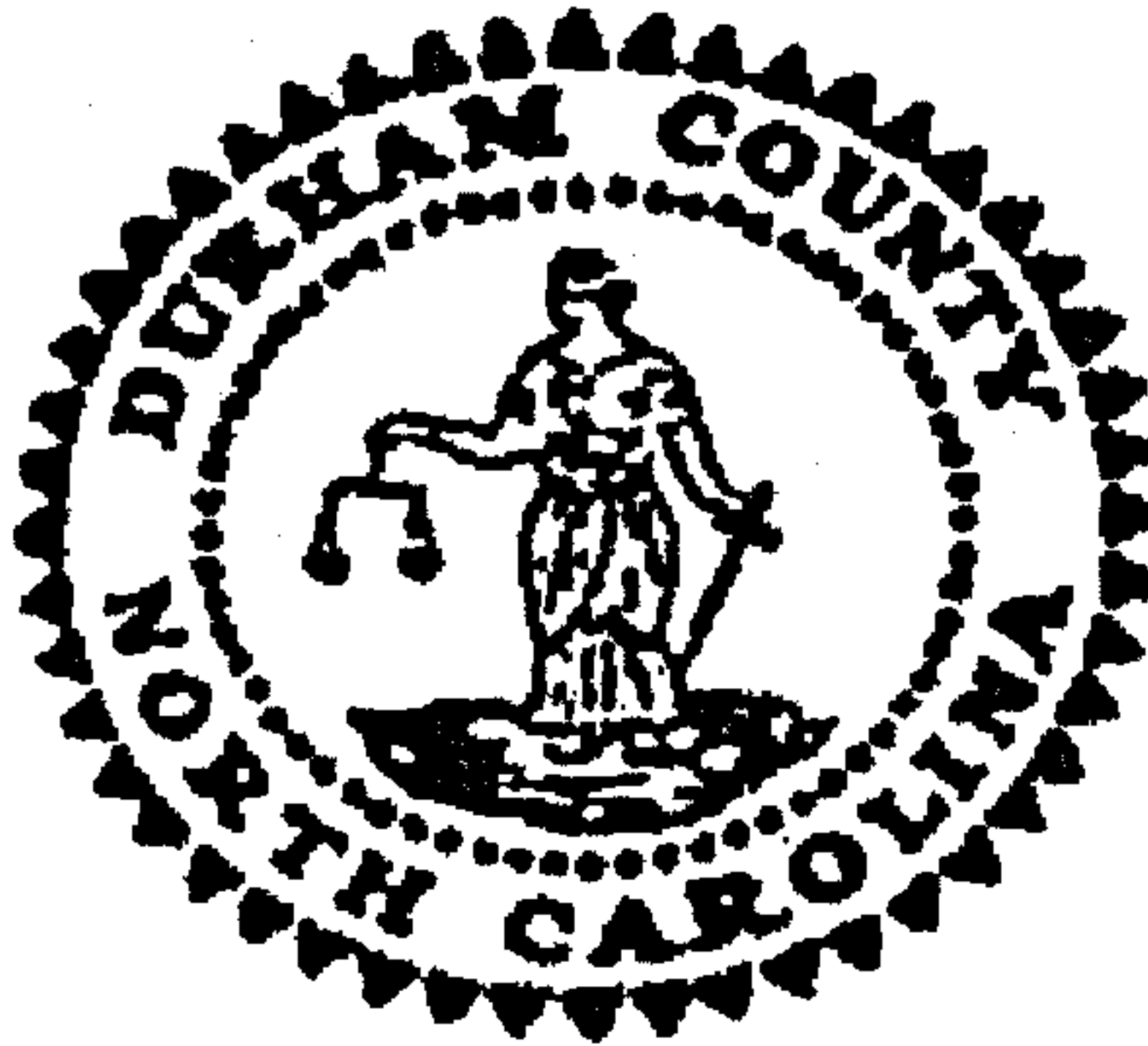
The real property described on Exhibit "A" to the Original Supplemental Declaration, as amended and supplemented is incorporated herein by reference.

Exhibit "B" Property which may be subjected to this Declaration

Any property which is adjacent to the property described in Exhibit "A" or within the larger master planned community in which Auburn Square is being developed.

EXHIBIT "C"

Exhibit "D" of the Original Declaration setting forth the consent of Barbee Road Associates, LLC as owners of certain real property subject to the Original Supplemental Declaration is incorporated herein by reference as Exhibit "C" to this Amended and Restated Declaration.



WILLIE L. COVINGTON
REGISTER OF DEEDS , DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

Filed For Registration: 10/11/2002 01:06:42 PM
Book: RE 3609 Page: 656-701
Document No.: 2002048363
AMD 46 PGS \$146.00
Recorder: SHARON DAVIS

State of North Carolina, County of Durham

The foregoing certificate of JACKIE I SWYMER , SHAWN MEACHAM Notaries are certified to be correct. This
11TH of October 2002

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: *Sharon Davis*
Deputy/Assistant Register of Deeds



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