

WAKE COUNTY, NC 700  
 LAURA M RIDDICK  
 REGISTER OF DEEDS  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR SOUTHERN OAKS SUBDIVISION**

**PREPARED BY AND HOLD FOR:  
 SANDMAN & ROSEFELDE-KELLER #169**

**STATE OF NORTH CAROLINA  
 COUNTY OF WAKE**

THIS DECLARATION is made this 23<sup>rd</sup> day of March, 2004, by NC CAPITAL GROUP SOUTHERN OAKS, LLC, a North Carolina limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the Owner of that certain real property located in Wake County, North Carolina, commonly known as "Southern Oaks Subdivision", and as more particularly described on Exhibit" A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Declarant desires to subject the Property to the protective covenants, conditions and restrictions set forth herein for the purpose of insuring the best use and most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the construction of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the construction of attractive structures with appropriate locations on the Lots; to secure and maintain proper set backs from streets and adequate free spaces between structures; to provide for the continued maintenance (including irrigation, if applicable) and repair of any Common Area, including the pond located on the Property and any facilities related thereto, as well as the landscaped entrance to the Subdivision and any landscape easements or landscaped islands provided for herein; and in general to provide adequately for a high type and quality of Improvements on the Property and thereby enhance the values of the investments made by the Owners; and

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, SOUTHERN OAKS HOMEOWNERS ASSOCIATION, INC., for purposes of exercising the functions aforesaid and more fully described hereinbelow.

NOW, THEREFORE, Declarant hereby declares that the Property, and such additions and annexations thereto as may hereafter be made pursuant to Article III hereof, is and shall be held, used, transferred, sold, conveyed and occupied subject to these Covenants.

## ARTICLES I DEFINITIONS

- 1.1. "Articles" means the Association's Articles of Incorporation.
- 1.2. "Association" means SOUTHERN OAKS HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.
- 1.3. "Board of Directors" means the Board of Directors for the Association.
- 1.4. "Bylaws" means the Association's Bylaws.
- 1.5. "Common Area" means all real property which is owned or leased by, or located in an easement granted to or reserved by, the Association and which has been designated by Declarant, the record owner of newly annexed land, or the Association as "Common Area", "Open Space" or some other similarly descriptive term, on a recorded plat, in a Declaration of Annexation, or in a deed or other written instrument for the common use and enjoyment of the Members of the Association. Common Area shall also mean and include the following: (a) all personal property owned or leased by the Association and designated for the common use and enjoyment of the Members of the Association; and (b) the following Subdivision Improvements which are not otherwise dedicated to and accepted by a governmental entity or serving only a single Lot: (i) signage; and (ii) water and sewer lines. Declarant may recombine any portion of the Common Area with a Lot, pursuant to the terms of Section 8.1 hereof. All Common Area shall be subject to the terms and conditions of these Covenants.
- 1.6. "Common Expenses" shall mean and include, as applicable, the costs and expenses referenced in Section 7.2 hereof, as well as the following: all sums lawfully assessed by the Association against its Members; expenses for maintaining the roads, streets, rights of way, Department of Transportation right of way easements, and, as determined by the Board of Directors, ditches located within the right of way easements, and any amenities, as provided herein; expenses of maintaining, administering, repairing and replacing the Common Area, including expenses for maintaining entrance signage, lighting, irrigation, paving and landscaping; expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws; hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require that the Association purchase, or that the Association deems appropriate to purchase; ad valorem taxes and public assessment charges lawfully levied against the Common Area; expenses of maintaining private drainage and utility easements and facilities located within the boundaries of the Property, which cross Common Area, and/or serve both the Property and lands adjacent thereto; expenses of maintaining the Common Area so that it continues to effectively function for its intended use, and any dedication or conveyance of Common Area shall provide for such responsibility; and any other expenses determined by the Board of Directors or approved by the Members of the Association to be Common Expenses.
- 1.7. "Declarant" means NC CAPITAL GROUP SOUTHERN OAKS, LLC, a North Carolina limited liability company, and its successors and assigns to whom the rights of Declarant hereunder may

be transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns acquire more than one undeveloped Lot. The development of a Lot shall mean and refer to the construction of Improvements thereon.

1.8. "Declaration" means this Declaration of Covenants, Conditions and Restrictions applicable to the Property, and any amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina (sometimes referred to herein as the "Covenants").

1.9. "Declaration of Annexation" means a declaration filed supplemental to this Declaration which, upon its filing with the office of the Wake County Register of Deeds, subjects additional property to the scheme of this Declaration.

1.10. "Improvements" means any structure of any type or kind and all exterior modifications thereof, including, without limitation, buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, fences, hedges, landscaping, mass plantings, lawns, sidewalks, poles, signs, and utility lines and facilities.

1.11. "Lot" means any numbered or lettered parcel of land (excluding Common Area) shown on any plat, described by a metes and bounds description, recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration, as it may be amended.

1.12. "Lot in Use" means any Lot for which a certificate of occupancy has been issued for Improvements thereto. A Lot shall also be deemed a "Lot in Use" under the following circumstances: (a) eight (8) months after the Lot is conveyed by Declarant to an Owner who is a licensed general contractor or builder (a "Builder"), whether or not a certificate of occupancy has been issued for Improvements thereto; and (b) immediately upon the conveyance of a Lot by Declarant or a Builder to an Owner who is not a Builder.

1.13. "Member" means every Person who holds membership in the Association.

1.14. "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

1.15. "Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, or other entity.

1.16. "Property" is as defined above, but shall also include any annexations thereto of the real property described in Article III.

1.17. "Subdivision" means SOUTHERN OAKS, as shown on the recorded subdivision plat(s) of the Property.

## **ARTICLE II MERGERS**

Upon a merger or consolidation of the Association with another organization, as provided for in

its Bylaws, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowners association or, alternatively, the properties, rights and obligations of another homeowners association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners association may administer these Covenants, together with the covenants and restrictions established for any other properties as one scheme. No such merger or consolidation shall, however, effect any revocations, changes or additions to these Covenants, as the same may be amended, except as hereinafter provided.

### ARTICLE III ANNEXATION OF ADDITIONAL PROPERTIES

3.1. Annexation by Members. Except as provided in Section 3.2, and subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property, additional properties may be added and annexed to the Property only if the votes of at least two-thirds (2/3) of each class of Members entitled to cast votes are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth in Section 7.6 hereof, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

3.2. Annexation by Declarant. If within ten (10) years from the date the Association is incorporated Declarant develops additional land located adjacent to or across a public or private street from the Property, and any property adjacent thereto or across a public or private street therefrom which is annexed thereto in accordance with the provisions hereof, Declarant may annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

3.3. Conveyance of Common Area. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association,

in accordance with Section 6.3, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is platted.

#### **ARTICLE IV MEMBERSHIP**

Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

#### **ARTICLE V VOTING RIGHTS**

The Association may have the following two (2) classes of voting membership:

(a) Class A Members shall be all Owners with the exception of the Declarant. Declarant shall, however, be a Class A member upon the termination of Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as the majority of such Persons among themselves determine; but in no event shall more than one (1) vote be cast with respect to each Lot. Fractional voting is prohibited. At any meeting of the Members, a representation by any of such Persons that a majority of such Persons have agreed as to the vote for such Lot shall be conclusive unless another of such Persons contests such representation at such meeting prior to the casting of such vote.

(b) The Class B Member shall be the Declarant. The Class B Member shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs first:

(i) Declarant's written consent to termination; or

(ii) When the total votes outstanding in Class A equal the total votes outstanding in Class B [provided, however, that Declarant shall retain its architectural review and approval rights under Article XI until the Class B membership is terminated in accordance with either Section 5.1(b) (i) or (iii)]; or

(iii) Ten (10) years following the date of incorporation of the Association.

Notwithstanding anything contained in sub-paragraphs (i) and (ii) above to the contrary, the Class B membership shall be reinstated if, after the events described in sub-paragraphs (i) and (ii) above, and before the time stated in sub-paragraph (iii) above, Declarant annexes additional lands to the Property without the assent of the Class A Members, as provided for in Section 3.2 of the Declaration.

## ARTICLE VI PROPERTY RIGHTS IN COMMON AREA

6.1. Owners' Easements of Use and Enjoyment. Every Member shall have a right and easement of use and enjoyment in and to the Common Area (the "Owners' Easement"), together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas, if any, of the Common Area. The Owners' Easement shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area, subject to the legal requirements of any governmental authority having jurisdiction over the Property.

(b) The right of the Association, in accordance with its Articles and Bylaws, to impose rules and regulations for the use and enjoyment of the Common Area and the Improvements related thereto, which rules and regulations may further restrict the use thereof. The Association's Board of Directors shall have the right to suspend the voting rights and right to use the recreational or other Common Area facilities by an Owner, with notice and a hearing, for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and any such suspension shall apply to any Person delegated the right to use and enjoy the Common Area and Improvements by the suspended Owner.

(c) The right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of Members and an instrument properly executed by the Association has been recorded in the Wake County Registry. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, that conveyances for general utility purposes as specified herein may be made without consent of the Members. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and regress to public and private streets and walkways.

(d) The right of the Association to exchange Common Area for other properties, subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property.

(e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area, and the Improvements related thereto and, in aid thereof, to mortgage such properties; provided the rights of the mortgagees in such properties shall be subordinate to the Owners' Easement and the rights of the Association hereunder.

(f) The right of the Association to grant and/or establish upon, over, under and across the Common Area further easements (including, without limitation, those provided herein) as may be necessary for the convenient use and enjoyment of the Property.

In addition to the foregoing, each Owner's use and enjoyment of the pond located on the Common Area shall be subject to the following provisions:

- (i) No boat may be stored or left unattended on the pond or upon any other Common Area.
- (ii) No net fishing shall be allowed or permitted.
- (iii) No dumping or discharge of any substance into the pond shall be allowed or permitted, other than ordinary storm water management and/or compounds necessary for the proper maintenance of the pond.
- (iv) The Association shall not be responsible for the supervision of any activities on or uses of the pond.
- (v) At all times when the pond is being used for any purpose by a family member, guest, invitee or licensee of an Owner, the Owner shall be responsible for supervising such use.
- (vi) Except in the event of an emergency, no spot light or search light shall be shown over or across the pond.

6.2. Delegation of Use. Except as may be specifically limited hereinbelow, any Owner of a Lot may delegate, in accordance with the Bylaws, its right of use and enjoyment to the Common Area and Improvements related thereto to the members of its family, its guests, its tenants, or contract purchasers who reside on such Owner's Lot.

6.3. Title to the Common Area. Prior to the conveyance of the first Lot within the Property, Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area to the Association, free and clear of all encumbrances and liens, other than the lien of: (i) current taxes and assessments not in default; (ii) utility, drainage and greenway easements, and other easements and encumbrances not constituting a lien to secure the payment of money; and (iii) the terms and conditions of this Declaration, including any amendments thereto and any applicable supplemental Declaration of Annexation.

## ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

7.1. Lien of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges (the "Annual Assessments"), and (b) special assessments for extraordinary maintenance and capital improvements (the "Special Assessments"), all as hereinafter provided (collectively, the "Assessments"; and each an "Assessment"). The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Board of Directors and may be collected on a monthly, quarterly, semiannual or yearly basis, as determined by the Board of Directors. The Assessments shall be charged to each Owner of a Lot in Use. The Assessments, together with interest, late fees, and costs of collection (including reasonable attorneys' fees), shall be a lien upon the applicable Lot from the due date thereof, as set by the Board of Directors, continuing until paid in full. Each such Assessment, together with interest, late fees and costs of collection (including reasonable attorneys' fees), shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for the delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall also have the authority, through the Board of

Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration.

Each Owner covenants for itself, its heirs, successors and assigns, to pay each Assessment levied by the Association on each Lot conveyed to such Owner within ten (10) days of receipt of an invoice for the same; and if such charge shall not be paid within thirty (30) days from the date that the invoice is deposited, postage prepaid, in the United States mail, in an envelope addressed to such Owner at its address as it appears on the books of the Association or to such other address as the Owner shall have designated in writing, the amount of such charge shall become a lien upon such Lot and shall continue to be such a lien until fully paid.

7.2 Purpose of Assessments. The Assessments shall be used exclusively for the purposes of promoting the beautification of the Property, the recreation, health, safety and welfare of the Owners, and the improvement, maintenance and repair of the Common Area and the Improvements related thereto. The Common Expenses to be funded with the Assessments shall include, without limitation, taxes and assessments levied against the Common Area, all insurance premiums required hereunder (including, without limitation, casualty, liability and fidelity bond premiums), Association operational costs, management fees, if any, the enforcement of these Covenants and the rules of the Association, the employment of counsel, accountants and other professionals for the Association when necessary, the cost of landscaping, maintaining and repairing the Common Area, the bidding at foreclosure sales as set forth in Section 7.9, and the cost of such other needs as may arise. The Association may maintain a reserve fund for periodic maintenance, repair, and replacement of the Common Area and the Improvements thereto, including the pond and the facilities associated therewith.

7.3 Annual Assessments.

(a) On or before December 1st of each year, the Board of Director's shall adopt the Budget (as defined below) for the upcoming Annual Assessment Period. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Annual Assessment Period (together the "Budget"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Owner for the upcoming Annual Assessment Period.

(b) Notwithstanding the above to the contrary:

(i) Through and including January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot in Use shall be \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00).

(ii) An annual increase in the Annual Assessments shall not be more than ten percent (10%), except by approval of at least two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting call for this purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(iii) Subject to the provisions of this Article VII, the Board of Directors may fix the Annual Assessment at any amount not in excess of the maximum Annual Assessment allowed for the applicable calendar year.

7.4 Working Capital. In addition to the regular Assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to two (2) months Assessment on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular Assessment funds.

7.5 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any Annual Assessment Period, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital Improvement upon the Common Area, or any other unexpected expense for which the Association is responsible, provided that, any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

7.6 Notice and Quorum for Any Action Authorized Under Article VII. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.7 Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots in Use.

7.8 Date of Commencement of Annual Assessments/Due Dates. The Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date of the Annual Assessment shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

7.9 Effect of Nonpayment of Assessments/Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If

the Assessment is not paid within thirty (30) days after the due date, the Assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the rate of twelve percent (12.0%) per annum or the highest rate allowed by law, whichever is less, and the Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article VII shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or by abandonment of its Owner's Lot.

7.10 Subordination of the Lien of Assessments to Mortgages and Ad Valorem Taxes. The lien of the Assessments shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes on a Lot. Except as may otherwise be provided hereinbelow, the sale or transfer of any Lot shall not affect the Assessment lien. Provided the Association is given prior written notice thereof, the sale or transfer of a Lot pursuant to the foreclosure of such mortgage or tax lien, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. In no event, however, shall a sale or transfer relieve the Owner of any such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

7.11 Exempt Property. All Lots dedicated to and accepted by a local public authority, the Common Area, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the Assessments.

## ARTICLE VIII USE RESTRICTIONS

8.1 Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family residential purposes only. The lay of each Lot as shown on the recorded plat shall be substantially adhered to; provided, however, that the size and shape of any Lot may be altered with the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee and the appropriate governmental authority. More than one Lot may be used as one Building Site. In no event, however, shall any Lots be re-subdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change. Declarant reserves the right to utilize any Lot for purposes of constructing a road to access adjacent property, subject to approval by all necessary governmental authorities.

8.2 Setbacks. Building setbacks of the Improvements on any Lot shall be as set forth in the zoning ordinances of Town of Fuquay-Varina, North Carolina, or any other governmental authority having jurisdiction over the Property. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Building Site to encroach upon another Lot. Declarant (so long as Class B membership exists), the Board of Directors or the Architectural Committee may

approve a violation of these requirements by written waiver, provided such violation otherwise complies with the applicable zoning ordinances and setback requirements.

8.3 Improvements. Except as may otherwise be authorized herein, Improvements on any Lot shall be limited to a single-family, residential structure, and the accessory uses thereto. All Improvements constructed upon the Lots shall be of new construction. No residential structure shall be constructed or placed on any Lot which has a minimum area of less than 1,400 square feet of heated area for a one (1) story residence or 1,500 square feet for a one and one-half (1 ½) story or a two (2) story residence. No residential structure shall be constructed or placed on any Lot which is more than three (3) stories in height. No structures of a temporary character, manufactured home, modular home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently. No storage shed, garage or other out-building shall be constructed, used or permitted on any portion of the Property without the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

8.4 Declarant Facilities. Notwithstanding any provision in this Article VIII to the contrary, for ten (10) years following the date of incorporation of the Association, Declarant may, subject to all applicable laws of any governmental authority having jurisdiction over the Property, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities may include, without limitation, a mobile or modular business/sales office, storage area, construction yards and signs.

8.5 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are (a) not maintained for commercial purposes, (b) reasonably restrained while outside the residence, and (c) not permitted access to an outside shelter which is (i) not approved by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, or (ii) visible from the street.

8.6 Screening. All clothes line, equipment (including play equipment), garbage cans, service yards, wood piles or storage piles shall be kept screened by adequate Improvements so as to screen them from view of the street and adjoining Lots. All garbage, trash or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

8.7 Leasing. No Lot or any portion of the Improvements situated thereon shall be leased for transient or hotel purposes, or for purposes of operating a group home; and no Lot or any portion of the Improvements situated thereon may be leased to an individual with prior felony convictions. Notwithstanding the foregoing, an Owner may lease not less than the entire residential structure on its Lot, provided that the lease must be in writing, must be for a period of not less than three hundred sixty five (365) days, and must provide that it is subject to this Declaration and the Bylaws, and that any failure by a tenant to comply with such documents shall be a default under the lease. Failure to include this provision in the lease shall not relieve the tenant from complying with the Declaration and the Bylaws.

8.8 Utility Devices. Without the prior written approval of Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, no exterior television or radio antennas, satellite dishes, solar panels or other utility devices of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements situated on the Property; provided,

however, that television satellite dish antennae less than 24" in diameter may be approved subject to the provisions of this Article VIII.

8.9 Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be conducted on the Property or the Improvements located thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Property be used in any way or for any purpose which may endanger the health of or unreasonably disturb an Owner or its tenants or invitees. No "For Sale" or "For Rent" signs (exceeding four (4) square feet in dimension), advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Area. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, for ten (10) years following the date of incorporation of the Association. Further notwithstanding the foregoing, signage may be installed and maintained within an easement or buffer area shown on any recorded plat of the Property if permitted by all applicable laws, rules, regulations and ordinances, and if approved in writing by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

8.10 Vehicles. No boats, recreation vehicles, or trailers of any Owner or member of its family, tenants, or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Property. Such vehicles shall only be parked within the Owner's garage or other areas of the Property which may be designated by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee. No boat, recreation vehicle or trailer may be located closer to the street than the front foundation of the house, the exact location to be approved by the Declarant (as long as Class B membership exists), the Board of Directors or Architectural Committee. No Owner or its tenant(s) shall park or store an inoperative or abandoned boat, recreation vehicle, trailer or automobile on any Lot or on the streets in the Property.

8.11 Above-Ground Tanks. No exposed above-ground tanks (except for approved recreational swimming pools) will be permitted for the storage of fuel or water or any other substance.

8.12 Lawn Ornaments. Decorative lawn ornaments shall be approved in writing by the Architectural Committee prior to installation or placement thereof on any Lot.

8.13 Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

8.14 Fences.

(a) Fences in general. No fences or walls shall be erected or maintained in side yards and rear yards that are subject to the maintenance easement specified in Section 9.5. Notwithstanding the foregoing, fences may be erected and maintained within an easement or buffer area shown on any recorded plat of the Property if permitted by all applicable laws, rules, regulations and ordinances, and if approved by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee in accordance with this Section 8.14(a). Perimeter fencing on a Lot shall be no greater than six (6) feet in height. All fences require the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

(b) Reserved.

8.15 Parking Right. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by that Owner. Owners and their tenants shall not be permitted to park their automobiles on the streets in the Subdivision.

8.16 Maintenance. Each Owner shall keep its property free of grass taller than eight inches (8"), undergrowth, dead trees, trash and rubbish, and shall otherwise properly maintain its Lot and the Improvements located thereon so as to present a pleasing appearance. If an Owner does not, in the reasonable opinion of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, properly maintain the same, Declarant and/or the Association may have the required work done and the costs incurred for such work, plus a service charge of fifteen percent (15%) of such costs, shall be assessed against the Owner.

8.17 Governmental Regulations. Each Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Areas. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

8.18 Additional Restrictions. The Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

8.19 Anti-Discrimination. No action shall at any time be taken by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee in the enforcement or interpretation of these Covenants and Restrictions which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

8.20 Waiver. Notwithstanding anything above to the contrary, Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article VIII. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Property subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any applicable governmental ordinances.

## ARTICLE IX EASEMENTS

9.1 Blanket Utility Easement. A blanket easement upon, across, over and under all of the Property, including Lots and Common Area, is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, without limitation, cable, water, sewer, gas, telephones, and electricity. Notwithstanding the foregoing, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated (i) in the Common Area, except as approved by Declarant or the Association (after the termination of Class B membership); (ii) under any residence; or (iii) on the Property in a manner which would have a material negative impact on the value of the

Property or any portion thereof and the Improvements located thereon. If any utility furnishing a service covered by this general easement requests a specific easement by separate recordable documents, Declarant or the Association (after the termination of Class B membership) will have the right and authority to grant such easement. The easement provided for in this Article IX shall in no way affect other recorded easements on the Property.

9.2 Association Easements. An easement is granted to the Declarant (as long as Class B membership exists) or the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over the Common Area. In addition, every Lot shall be subject to an easement for entry by the Declarant (as long as Class B membership exists) or the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any Improvement to or portion of the Common Area, including the pond. The Declarant (as long as Class B membership exists) and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the Members as provided herein.

9.3 Encroachment. All Lots and the Common Area shall be subject to easements for the encroachment of initial Improvements constructed on adjacent Lots and Common Area by Declarant, as well as for the maintenance thereof. If an encroachment shall occur after the construction of the initial Improvements due to settling or shifting of such Improvements or due to any authorized construction, alteration or repair, an easement shall exist for the continuance and maintenance of such encroachment upon the Common Area or subject Lot for so long as such encroachment shall naturally exist.

9.4 Temporary Construction Access and Disturbance Easement. A temporary easement over, through and to the Common Area is reserved and established in favor of Declarant and all Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of Improvements at any time on a Lot by Declarant or an Owner, as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot (the "Construction Work"). The Construction Work shall be performed in accordance with all applicable laws, pursuant to Plans & Specifications (as defined in Section 11.2 hereof) approved by the Architectural Committee, as applicable, and in a manner which will minimize to the maximum extent possible any soil or land disturbance activities. The Construction Work shall also be completed as soon as reasonably practicable. The Person(s) performing the Construction Work shall employ all safeguards reasonably necessary to protect the safety of the portion of the Property subject to this easement (the "Construction Easement Area") and all Persons entitled to use the same, as well as the environmental and aesthetic integrity of the Construction Easement Area. The Person(s) performing the Construction Work shall also keep the subject Lot and the Construction Easement Area free and clear of all construction waste and debris as the same may be produced during the construction work. Within five (5) business days following the completion of the Construction Work, the Person(s) responsible therefore shall (a) remove all materials, supplies and equipment associated with such work from the Construction Easement Area, and (b) restore the land to a condition which is graded smooth, in harmony with surrounding areas and, if applicable, landscaped in a manner substantially similar to any previous landscaping. If that Person fails to restore the disturbed land as required, the Declarant (as long as Class B membership exists) or the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in

performing that restoration. This easement shall be restricted to that Common Area which shall be reasonably servient and proximate to the property upon which the construction is taking place.

9.5 Maintenance Easement. An easement over, through and to adjacent Lot(s) is reserved and established in favor of all Owners of any dwelling unit or other Improvements located closer than five (5) feet from a Lot line. This easement shall be used only as and when necessary to facilitate maintenance of the dwelling at any time on a Lot by an Owner. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to substantially the same condition as existed prior to such maintenance work. If such Person fails to restore the disturbed land as required, the Owner(s) of the adjacent Lot(s) may restore the land to the required condition and that Person shall indemnify the Owner(s) of the adjacent Lot(s) for the reasonable expense incurred in performing that restoration.

9.6 Drainage Easement. For a period of thirty-six (36) months following the initial conveyance of a Lot to an Owner by Declarant, that Lot shall be subject to an easement for entry and encroachment by Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

9.7 Easement for Underground Utilities and Street Lighting. Declarant reserves the right to subject the Property to a contract with Carolina Power & Light Company or Wake Electric Membership Corporation for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the Owner of each Lot. The Declarant (as long as Class B membership exists) and the Association may elect to pay all invoices for street lighting in the Subdivision; in which event, such costs shall be deemed a Common Expense.

9.8 Governmental Easements.

(a) Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Area and over an area five (5) feet behind any right-of-way in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water and sewage facilities, and the collection of garbage.

(b). An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar Persons to enter upon the private streets of the Subdivision and the Common Area in the performance of their duties.

9.9 Sign or Landscape Easement. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over any portion of a Lot denoted as "Sign Easement" or "Landscape Easement" on any recorded plat of the Property. The Association shall be solely obligated and responsible to maintain such easement area, including, without limitation, planting, watering, pruning, weeding, spraying, maintaining and replacing any shrubbery, trees, fences, signage, and other landscape material which shall be placed thereon. The Owner of any Lot encumbered by a sign or landscape easement area agrees not to remove, injure or otherwise destroy the signage or landscape material placed within such easement area; but such Owner shall in all respects remain the fee owner of such Lot and may use the Lot for all purposes not inconsistent with the terms and conditions hereof.

9.10 Priority of Easements. Each of the above easements shall be deemed established upon the recordation of this Declaration and shall henceforth be deemed covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

## ARTICLE X INSURANCE

10.1 Coverage. The Association shall obtain a broad-form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This coverage shall be in the amount of at least One Million and No/100 Dollars (\$1,000,000.00). This insurance may include coverage against vandalism. All Persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

10.2 Ownership/Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association, as insurance trustee, shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Covenants and Restrictions. The proceeds received by the insurance trustee shall be distributed to, or for the benefit of, the appropriate beneficiary(ies).

10.3 Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

10.4 Prohibited Acts. No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for, or the cancellation of, any insurance maintained by the Association.

## ARTICLE XI ARCHITECTURAL CONTROL AND INSPECTION

11.1 Members. The Architectural Committee shall initially consist of one (1) or more Persons designated by Declarant. Upon the termination of Class B membership in accordance with Sections 5.1(b)(i) and (iii), Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Such assignment may, however, be made subject to a reservation by Declarant of its right hereunder to review and approve all plans for new homes and other Improvements to be constructed on any Lot in Use. Upon the assignment of Declarant's architectural review rights in accordance with the terms of this Section 11.1, the Board of Directors shall appoint three (3) or more persons as the members of the Architectural Committee.

11.2 Powers. The Architectural Committee shall have the right to refuse approval of any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the suitability of the proposed Improvements, color, and materials

to be used in those Improvements, the site upon which they are proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right to enter and inspect any Lot for the purpose of determining whether there exists thereon any Improvements which violate the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. If an Owner fails to construct Improvements on its Lot(s) in accordance with the Plans & Specifications approved therefore, or if an Owner constructs Improvements without obtaining approval of the Plans & Specifications therefore, as required by this Article XI, the Declarant (as long as Class B membership exists), the Association, or the Architectural Committee may, but shall not be required to, remedy the non-compliance or remove the unauthorized Improvements, and the Owner of such Improvements shall indemnify the Declarant, the Association or the Architectural Committee, as applicable, for the reasonable expense incurred in performing such remedial work or removal. If an Owner fails to commence construction of initial Improvements on its Lot within ninety (90) days after the Lot is conveyed by Declarant to the Owner, the Declarant (as long as Class B membership exists) shall have the right, but not the obligation, to re-purchase the Lot from the Owner at the same price paid to Declarant by the Owner. The Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any Improvements, or to remove any unauthorized Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees).

**11.3 Approval of Plans & Specifications.** No Improvement shall be constructed upon the Property, nor shall any Improvement be repaired or rebuilt after casualty damage until completed Plans & Specifications showing the nature, kind, space, height, materials, and location of the shall have been submitted to and approved in writing by the Architectural Committee. An Owner's proposed contractor(s) and/or architect for any Improvement shall be subject to the reasonable prior written approval of the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications, the proposed contractor(s), and/or the proposed architect within sixty (60) days after they have been submitted shall be deemed to be a disapproval thereof. Any Plans & Specifications containing inaccurate information or omitting information of a material nature shall not be deemed to be approved notwithstanding any prior approval by the Architectural Committee. Neither the Association, the Association's Board of Directors, Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any Persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications, contractor(s) or architect. Every Person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

## **ARTICLE XII GENERAL PROVISIONS**

**12.1 Enforcement and Remedies.** Declarant (as long as Class B membership exists), the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant (as long as Class B membership exists), the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any default in and/or breach of any of the

terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.2 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that such remaining paragraphs, sections, sentences, clauses or phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

12.3 Duration and Amendments.

(a) These Covenants shall run with the land for a term of thirty (30) years from the date of their recording and shall inure to the benefit of the Association, Declarant (so long as Class B membership exists), and any Owner, and their respective legal representatives, heirs, successors and assigns. These Covenants shall thereafter automatically be extended for successive periods of ten (10) years each unless terminated or amended by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots.

(b) Notwithstanding the foregoing, Declarant shall have the right, as long as Class B membership exists, to amend this Declaration without the consent of the Members, for the following purposes: (i) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property; (ii) to qualify the Property or any Lots and Improvements thereto for mortgage or improvement loans made, insured or guaranteed by a government agency; or (iii) to comply with the requirements of laws or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina regarding purchase or sale of such Lots and Improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, a governmental authority having jurisdiction over the Property, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements thereof, shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(c) No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, that if such authority fails to approve or disapprove the amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and the Person submitting the amendment shall be deemed to have fully complied with this covenant.

(d) As long as Class B membership exists, and if Declarant decides to qualify the Property for Federal Housing Administration or Veterans Administration approval, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, dedication of Common Area, and amendment of this Declaration.

(e) If an amendment is executed as provided hereinabove, each such amendment shall be delivered to the Board of Directors which shall, within thirty (30) days:

(i) reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots, if necessary (for this purpose, the Board of Directors may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and

(ii) attach the following certification:

#### CERTIFICATION

By authority of its Board of Directors, SOUTHERN OAKS HOMEOWNERS ASSOCIATION, INC. certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the Lots in the Property and is therefore a valid amendment to the Covenants recorded at Book \_\_\_\_\_ Page \_\_\_\_\_, Wake County Registry.

SOUTHERN OAKS HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ President

Within the thirty (30) day period, the Board of Directors shall cause the amendment to be recorded with the appropriate Register of Deeds. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

12.4 Availability of Documents. The Association will have current copies of the Declaration, Bylaws, and other rules concerning the Subdivision, as well as the Association's own books, records and financial statements, available during normal business hours for inspection by Owners and holders, insurers and guarantors of first mortgages that are secured by Improvements in the Subdivision.

12.5 Casualty. Whenever all or any part of the Common Area Improvements, if any, shall be damaged or destroyed by fire or other casualty, the insurance proceeds therefrom shall be payable to the Association. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such damage or destruction to repair or restore any such damaged or destroyed Improvements, or any part thereof, then the Board of Directors of the Association shall arrange for such repairs or restorations, and the Association shall disburse the insurance proceeds accordingly; subject, however, to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such repairs or restorations) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which

disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such damage or destruction to not replace such Improvements, or if the damage or destruction is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the casualty insurance proceeds in the manner hereinabove provided for the disbursement of any insurance proceeds remaining after payment of all costs incident to the repair or restoration of Improvements.

12.6 Condemnation. Whenever all or any part of the Common Area shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to replace any condemned Improvements, or any part thereof, on the remaining lands which are part of the Common Area, then the Board of Directors of the Association shall arrange for such replacements, and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to not replace such Improvements, or if the taking is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of Improvements.

12.7 Disputes. If any dispute arises concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

12.8 Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Declaration and the Association's Bylaws.

12.9 Member Addresses. Each Member agrees to keep the Association informed of its address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of its ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

12.10 Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all omissions, commissions, and violations of this Declaration by its employees, agents, subcontractors, tenants, guests and invitees. When a party to this Declaration consists of more than one Person, such party's liability hereunder shall be joint and several.

12.11 Captions. The captions and headings which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

12.12. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

12.13 No Exemption. No Owner or other party may exempt itself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot or the Common Area.

12.14 Conflict Between Declaration and Articles of Incorporation. Whenever there exists a conflict between the provisions of this Declaration and the Articles or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the Articles shall control.

12.15 Governing Law. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

12.16 Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any amendment thereto.

12.17 Reserved Declarant Rights. Declarant reserves the following development rights: (a) to add real estate to the Property in accordance with Section 3.2; (ii) to add Common Areas; (iii) to recombine Lots within the Property; (iv) prior to a conveyance of a Lot to an Owner, to withdraw such Lot from the Property, subject to the approval of any governmental authority having jurisdiction over the Property; (v) to create Lots; (vi) to impose supplemental conditions, restrictions and changes upon newly annexed Property, including, without limitation, changes in Lot and building size restrictions for additional property annexed hereto in accordance with Section 3.2, subject to the approval of any governmental authority having jurisdiction over the Property; and (vii) to reallocate Lots within the Property.

12.18. Responsibility and Liability For Private Streets. The Association shall be responsible for the maintenance of all private streets and driveways shown on the recorded plat(s) of the Subdivision.

12.19. Landscaped Traffic Islands.

(a) Landscaping of traffic island(s) within the right(s)-of-way of public street(s) shall be the sole responsibility of the Association. Neither the County nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way of public street(s), and the Association shall hold harmless the public.

(b) The Association shall be responsible for street landscaped islands within the right(s)-of-way of private street(s). Such street landscaped islands shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants shall be removed by the Association. and indemnify the County and State from such liability.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal as of the 25<sup>th</sup> day of March, 2004.

NC CAPITAL GROUP SOUTHERN OAKS, LLC

By: Charles T. McCarter, Jr. (SEAL)  
Charles T. McCarter, Jr., Manager

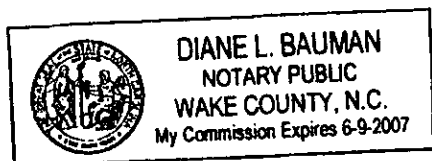
By: Paul R. Murphy, Jr. (SEAL)  
Paul R. Murphy, Jr., Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that CHARLES T. McCARTER, Jr., Manager of NC CAPITAL GROUP SOUTHERN OAKS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal or stamp, this 25<sup>th</sup> day of March, 2004.



Diane L. Bauman  
Notary Public

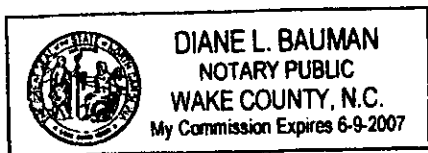
My Commission Expires: 6-9-2007

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that PAUL R. MURPHY, JR., Manager of NC CAPITAL GROUP SOUTHERN OAKS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 25<sup>th</sup> day of March, 2004.



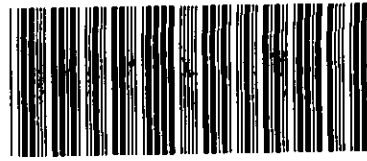
Diane L. Bauman  
Notary Public

My Commission Expires: 6-9-2007

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

BEING all of Lots 1 through 4, 77 through 91, 95 through 111, 138 through 141, 188 through 200, 203 through 207, 215 and 216, inclusive, open space and rights-of-way, Southern Oaks, Section 1A, containing 15.537 acres in the aggregate, as shown on plat recorded in Book of Maps 2004, Pages 249-251, Wake County Registry.



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Please retain with original document and submit for rerecording.



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

North Carolina – Wake County

The foregoing certificate 5 of Diane L Bruman

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

Laura M. Riddick, Register of Deeds

By: George W. Paxon  
Assistant/Deputy Register of Deeds

This Customer Group

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