

WAKE COUNTY, NC 72
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REGISTER OF DEEDS
PRESENTED & RECORDED ON
03/08/2006 AT 09:39:11

BOOK:011849 PAGE:02539 - 02567

*Return to Holly Pointe LLC
10612 Winding Wood Trail
Raleigh, NC 27613*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
HOLLY POINTE HOMEOWNERS ASSOCIATION, INC.**

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

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

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 50 acres of land located in the Town of Holly Springs, Wake County, North Carolina, as more fully described on **Exhibit A** attached hereto;

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

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

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

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

ARTICLE I DEFINITIONS

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article 1, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

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

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

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

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

Section 5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically Homeowner Association managed open space, managed landscape open space, Homeowner Association undisturbed open space, open space preservation and protection area, including the area within any drainage easements and the Stormwater Control Measures constructed therein, including Stormwater Control Measures situated outside of the public streets, and which serve more than one Lot and are not maintained by any governmental authority. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a Town of Holly Springs utility easement or a public street right-of-way. The Common Area and Facilities shall be maintained by the Association, unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein, except for normal landscaping and lawn maintenance on easements located on residential lots.

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

- a. All sums lawfully assessed by the Association against its Members;
- b. Expenses of the Common Area and administration, maintenance, repair, or replacement of the Common Area, including Stormwater Control Measures;
- c. Expenses declared to be Common Expenses by the provision of the Declaration or the By-laws;
- d. Hazard, liability, property insurance, or such other insurance premiums as the Declaration or the By-laws may require the Association to purchase;
- e. Ad Valorem taxes and public assessments charges lawfully levied against Common Areas owned in fee;
- f. Expenses agreed by the Members to be Common Expenses of the Association;
- g. Utilities used in connection with the Common Elements or by the Association;

- h. Unpaid assessments following the foreclosure of a first mortgage or first deed of trust;
- i. Upkeep and management of any recreation facilities and all other facility expenses;

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

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

- (a) December 31, 2015;
- (b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however, that*, Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 3-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

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

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

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

Section 12. "Properties" shall mean and refer to the "Existing Property" described in **Exhibit A** to this Declaration and any additional property annexed pursuant said Article 11.

Section 13. "Stormwater Control Measures" shall mean and refer to the underground storage pipes, its inlets and outlets, junction boxes and dissipaters located on the Property designed as drainage easements on recorded plats of the Property, together with drainage easements and all other storm drainage pipes, which serve the Property and are located outside public street rights-of-way (excluding those pipes and measures serving a single Lot).

Section 14. "Recreation Facilities" shall mean and refer to, without limitation, swimming pool, clubhouse, soccer field, any improvement to Common Area, and such easement rights in favor of Declarant or the Owners, as are designated as Recreational Facilities (hereinafter referred to as Facilities) by Declarant herein or hereafter from time to time by recording an appropriate map or Supplemental Declaration in the land records of Wake County. Declarant is not required to construct any Facilities herein.

Section 15. "Facility Expenses" shall mean and include:

- a. All sums lawfully assessed by the Association against its Members;
- b. Expenses of the Facilities and administration, maintenance, repair, employment, or replacement of Facilities
- c. Expenses declared to be Facility Expenses by the provisions of the Declaration or the By-laws;
- d. Hazard, liability, property insurance, or such other insurance premiums as the Declaration of the By-laws may require the Association to purchase;
- e. Ad Valorem taxes and public assessments charges lawfully levied against Facilities owned in fee;
- f. Expenses agreed by the Members to be Facility Expenses of the Association;
- g. Utilities used in connection with the Facilities or by the Association;

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

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

Section 2. Additions to Existing Property. At any time prior to December 31, 2015, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such

property only by the right-of-way of a public street or road). The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and; therefore, may alter the relative maximum voting strength of the various types of Members.

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

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

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

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

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

Upon expiration of the Declarant Control Period, (Article 1, Section 8 hereof), Declarant shall have one vote for each Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

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

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

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Holly Pointe Homeowners Association, Inc., recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

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

ARTICLE IV PROPERTY RIGHTS

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

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

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

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

Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, provided that such exchange is approved by the Town of Holly Springs.

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

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

(f) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities thereon.

Section 2. Delegation of Use.

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

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

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

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision, including the first phase, to an Owner, it will convey to the Association title to those portions of the Common Area, if any, owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of

ad valorem taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

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

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

It is the intent of the Declarant that a Common Area and Greenway Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. The first Owner of lots with a Greenway Easement, as outlined in the restrictive covenants, is responsible for establishing a greenway trail on their property. Each Owner shall be responsible for maintaining the Common Area and Greenway easement if located on his Lot, including mowing and fertilizing the same. If an Owner of a Lot on which a Common Area and/or Greenway easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall halt the right and obligation to ensure that the Common Area and Facilities are preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area and Facilities in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) procure and maintain liability insurance in an amount of not less than one million dollars (\$1,000,000.00) covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; (iii) procure and maintain hazard insurance on insurable improvements on the Common Area and Facilities on a current replacement basis in an amount

not less than one hundred percent (100%) of the insurable value; and (iv) pay all property taxes and other assessments levied against all Common Area and Facilities owned in fee by the Association; (v) procure and maintain Directors and Officers liability insurance.

(c) Association's Right of Entry for Maintenance of Common Area and Greenway Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area and Greenway easements, and any other portion of the Lot to the extent necessary to gain access to the Common Area and Greenway easements, for the purposes of (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area and Greenway easements as have been approved by the Association; and (iii) maintaining the Common Area and Greenway easements in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

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

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to pay the Amenities ("Amenities" shall be referred to herein facilities, recreation facilities, common areas, signage areas, and other areas of common use) Common Expenses and to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Amenities and Common Area and improvements thereon, including, without limitation, Stormwater Control Measures, including, without limitation, the

cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Amenities and Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; (vii) employment of the amenities, maintenance of dams and ponds or other bodies of water, if any, located within the Common Area; the maintenance of entrance ways, landscaping and lighting of Common Area, road medians and islands and entrance ways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the right-of-way of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2006, the Maximum Annual Assessment shall be \$ 800.00 for each Class A Lot (Exhibit B).

(a) From and after January 1, 2007, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year as set forth in Section 4 below, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessments for Lots may be increased without limitation if such increase is approved by not less than a majority of the votes cast appurtenant to each class of Lots present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in § 47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the first quarter following conveyance from Declarant to a builder or owner.

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

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

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than fifteen (15) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any constriction, reconstruction, repair or replacement of a capital improvement upon the Amenities and Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

Section 7. Effect of Nonpayment of Assessments, Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the

maximum rate allowable by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Amenities and Common Area or abandonment of his Lot nor shall damage to destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-half (1/2) of the maximum annual assessment for the appropriate Class A Lot in effect at the time of such sale or occupancy shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI RIGHTS OF LENDERS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VII EASEMENTS

Easements for the installation, maintenance and repair of sanitary sewer and Stormwater Control Measures are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of

such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

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

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

Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Lot 1 shown and designated as "Sign Easement" on the map recorded in Book of Maps _2006_, Page 362, Wake County Registry, for the purpose of installing, operating, repairing and maintaining landscaping and subdivision entrance signage, landscaping and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by the Town.

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

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV,

Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

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

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any part of a dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area and for the use thereof.

Section 5. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 6. Association's Easement upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 7. Greenway Easement. Notwithstanding any other provisions of these Declarations, Owners, Members, Tenants of Members, Members' guests or invitees, tenants, or families of Members shall not, within any portion of the Common Area which is greenway area dedicated to the Association, without the prior written consent of the Association;

- (a) Grant easements of any nature whatsoever;
- (b) Remove any trees or vegetation;
- (c) Erect gates, fences or other structures;
- (d) Place any garbage receptacles;
- (e) Fill or excavate; or
- (f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the Association may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association may adopt such other regulations governing the use of the greenway, as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE VIII ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been

submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$125.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision. The Declarant and its agents shall have the right to enter upon any Lot for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until thirty (30) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

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

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

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by

the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule. The Association shall have the right to request the law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

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

Section 3. Amendment. Otherwise, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for the purpose of conforming this Declaration to the requirements of any governmental law or regulation. This Declaration may also be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots.

Section 4. Non-Liability of the Town. The Town of Holly Springs shall not be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to increase the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant and, if required, by the Town of Holly Springs.

Section 6. Declarant's Right to Change Development. With the approval of the Town of Holly Springs, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, add Amenities, change unit types and reallocate units within the development.

Section 7. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association and Amenities, in an amount not less than \$1,000,000.00.

The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

Section 8. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area, Facilities and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any Facilities within the Common Area; provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 9. Condemnation/Casualty. If all or any part of the Amenities, Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements unless at least sixty-seven percent (67%) of the Members vote at such meeting against reconstruction, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing

and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house).

Section 10. Stormwater Control Measures. The Town of Holly Springs Code requires runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the properties be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Town of Holly Springs Code potentially subjecting each Owner to significant daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that at all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In the event that the Association neglects or fails to maintain, repair, replace, or reconstruct the Stormwater Control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the Town of Holly Springs. In the event that the Owner thereafter performs such maintenance, repair, replacement, or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot.

Section 11. Open Space Preservation and Protection Areas and Homeowner Association Undisturbed Open Space. No land-disturbing activity, removal of vegetation, application of impervious surface, or construction shall take place in Open Space Preservation Protection Areas without first obtaining a written permit from the Zoning Entity, including, but not limited to, a written permit from the Town of Holly Springs Inspections Department.

Ambiguities. If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

Section 14. Exoneration of Declarant. Each Owner of any Lot or any other party interested in the Property expressly agrees that no duty or obligation is imposed upon Declarant to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall Declarant be subject to any liability of any kind or nature whatsoever with respect to any third party as a result of failing to enforce same.

IN WITNESS WHEREOF, Declarant and other property owners have caused this instrument to be executed in its name by its duly authorized Officer or agent, as of the 7th day of March, 2006.

HOLLY POINTE, LLC

Holly Pointe Investors, LLC
By: ~~L. Sterling Development and Finance, Inc.~~, Manager

By: Lance S. Williams
Lance S. Williams, ~~President~~ Manager

I, the undersigned, ^{Manager of Holly Pointe Investors, LLC} a Notary Public of the aforesaid County and State, do hereby certify that Lance S. Williams ~~President of L. Sterling Development and Finance, Inc., a corporation,~~ said entity being the manager of Holly Pointe, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is President of said corporation, and said entity is the manger of Holly Pointe, LLC, and that by the authority duly given and as an act of the corporation and the company, the foregoing instrument was signed by himself on behalf of the corporation as manager of and on behalf the company.

Witness my hand and Notarial stamp or seal this 7th day of MARCH, 2006.

Nicole Locicero
Notary Public

My Commission Expires: My Commission Expires 11-14-2009



EXHIBIT A**TRACT ONE**

Lying and being in the Holly Springs Township, Wake County, North Carolina, and being more particularly described as follows:

BEGINNING at an existing iron pipe located on the northern right-of-way margin of Avent Ferry Road (State Road 1115) (60-foot public right-of-way), said point having North Carolina Grid Coordinates NAD 83 (1995) of N=207,985.77 meters and E=621,131.45 meters, and said point being located North 63° 46' 20" East 5,640.88 feet (ground distance) and 5,640.21 feet (grid distance) (CFG=0.9998798) from HSGS "Atwell" having North Carolina Grid Coordinates NAD 83 (1995) of N=208,745.524 meters and E=622,673.594 meters; thence from said existing iron pipe along the eastern boundary line of the property of Stephenson & Ward Realty and Development Co., Inc. (now or formerly) as described in a Deed recorded in Book 10611, Page 425, Wake County Registry, North 01° 36' 33" West 1.06 feet to a point; thence continuing with the eastern boundary line of the aforesaid Stephenson & Ward Realty and Development Co., Inc. property, North 01° 37' 35" West 1,544.64 feet to a bent existing iron pipe; thence along the southern boundary line of the property of Carolina Power & Light Company (now or formerly) as described in a Deed recorded in Book 7502, Page 818, Wake County Registry, and as shown on a map recorded in Book of Maps 1996, Page 1337, Wake County Registry, South 88° 18' 12" East 939.96 feet to an existing iron pipe; thence continuing along the western boundary line of the aforesaid Carolina Power & Light Company property, South 03° 06' 10" West 341.67 feet to an existing iron pipe; thence along the western boundary line of the property of Alexander McClain (now or formerly) as described in a Deed recorded in Book 2142, Page 460, Wake County Registry, South 03° 01' 44" West 566.62 feet to a point; thence continuing South 03° 01' 44" West 1.37 feet to a bent existing iron pipe located on the northern right-of-way margin of the aforesaid Avent Ferry Road; thence along the northern right-of-way margin of Avent Ferry Road in four (4) calls as follow: (1) South 49° 01' 31" West 28.98 feet to a point; thence (2) with the arc of a circular curve to the right having a radius of 15,020.00 feet, an arc distance of 210.12 feet, and a chord course and bearing of South 49° 25' 34" West 210.12 feet to a point; thence (3) with the arc of a circular curve to the right having a radius of 5,605.00 feet, an arc distance of 681.94 feet, and a chord course and bearing of South 55° 00' 32" West 681.52 feet to a point; thence (4) with the arc of a circular curve to the right having a radius of 47,945.00 feet, an arc distance of 124.93 feet, and a chord course and bearing of South 59° 18' 38" West 124.93 feet to the Point or Place of Beginning; containing a total of 25.553 net acres, more or less, 26.271 total acres, and 0.718 acres in the R/W; all as shown on a survey entitled "Survey of Property of Cornelius S. Bregman" dated February 16, 2005, prepared by Thompson & Associates, PA.

TRACT TWO

BEING all that tract or parcel of land lying and being in Town of Holly Springs, Holly Springs Township, Wake County, North Carolina and being more particularly described as follows:

BEGINNING at an existing iron pipe located on the northern right-of-way margin of Avent Ferry Road (State Road 1115) (60-foot public right-of-way), said point having North Carolina Grid Coordinates NAD 83 (1995) of N=207,985.77 meters and E=621,131.45 meters, and said point being located North 63° 46' 20" East 5,640.88 feet (ground distance) and 5,640.21 feet (grid distance) (CFG=0.9998798) from HSGS "Atwell" having North Carolina Grid Coordinates NAD 83 (1995) of N=208,745.524 meters and E=622,673.594 meters, said point also being the southwesternmost corner of the property of Cornelius S. Bregman and Kandes K. Bregman, as Trustees of the Cornelius and Kandes Bregman Trust u/a dated September 20, 1999 (now or formerly) as described in a Deed recorded in Book 10856, Page 2782, Wake County Registry; thence from said Point of Beginning, South 01° 36' 33" East 34.30 feet to an existing iron pipe located within the right-of-way of Avent Ferry Road; thence along the approximate centerline on the right-of-way of Avent Ferry Road in three (3) calls as follow: (1) South 60° 32' 01" West 294.72 feet to a point; thence (2) with the arc of a circular curve to the right having a radius of 4,198.02 feet, an arc distance of 248.23 feet, and a chord course and bearing of South 62° 13' 40" West 248.19 feet to a point; thence (3) with the arc of a circular curve to the right having a radius of 1,620.13 feet, an arc distance of 145.47 feet, and a chord course and bearing of South 68° 47' 04" West 145.42 feet to a point; thence leaving the centerline of the right-of-way of Avent Ferry Road, North 01° 37' 35" West 1,911.17 feet to a point located on the southern boundary line of the property of Carolina Power & Light Company (now or formerly) as described in a Deed recorded in Book 7502, Page 818, Wake County Registry, and as shown on a map recorded in Book of Maps 1996, Page 1337, Wake County Registry; thence along the southern boundary line of the aforesaid Carolina Power & Light Company, South 88° 21' 39" East 621.43 feet to a bent existing iron pipe; thence along the western boundary line of the aforesaid property of Cornelius S. Bregman and Kandes K. Bregman, as Trustees in two (2) calls as follow: (1) South 01° 37' 35" East 1,544.64 feet to a point; thence (2) South 01° 36' 33" East 1.06 feet to the Point or Place of Beginning; containing a total of 24.541 net acres, 25.015 total acres, and 0.474 acres in the R/W; all as shown on a survey entitled "Survey of Property of Stephenson & Ward Realty and Development Co." dated February 14, 2005, prepared by Thompson & Associates, PA (Job No. S-04-046).

TOGETHER WITH all right, title and interest in and to a sanitary sewer easement that is approximately 20-feet wide and is more particularly described as follows:

TO FIND THE TRUE POINT OR PLACE OF BEGINNING, begin at an existing iron pipe located on the northern right-of-way margin of Avent Ferry Road (State Road 1115) (60-foot public right-of-way), said point having North Carolina Grid Coordinates NAD 83 (1995) of N=207,985.77 meters and E=621,131.45 meters, and said point being located North 63° 46' 20" East 5,640.88 feet (ground distance) and 5,640.21 feet (grid distance) (CFG=0.9998798) from HSGS "Atwell" having North Carolina Grid Coordinates NAD 83 (1995) of N=208,745.524 meters and E=622,673.594 meters, said point also being the southwesternmost corner of the property of Cornelius S. Bregman and Kandes K. Bregman, as Trustees of the Cornelius and Kandes Bregman Trust u/a dated September 20, 1999 (now or formerly) as described in a Deed recorded in Book 10856, Page 2782, Wake County Registry; thence from said Point of Beginning, South 01° 36' 33" East 34.30 feet to an existing iron pipe located within the right-of-way of Avent Ferry Road; thence along the approximate centerline on the right-of-way of Avent Ferry Road in three (3) calls as follow: (1) South 60° 32' 01" West 294.72 feet to a point; thence

(2) with the arc of a circular curve to the right having a radius of 4,198.02 feet, an arc distance of 248.23 feet, and a chord course and bearing of South 62° 13' 40" West 248.19 feet to a point; thence (3) with the arc of a circular curve to the right having a radius of 1,620.13 feet, an arc distance of 145.47 feet, and a chord course and bearing of South 68° 47' 04" West 145.42 feet to a point; thence leaving the centerline of the right-of-way of Avent Ferry Road, North 01° 37' 35" West 1,315 feet to True Point or Place of Beginning; thence from said True Beginning Point:

North 88° 39' 58" West 252.25 feet to a point; thence North 65° 45' 24" West 133.54 feet to a point; thence South 89° 58' 51" West 201.01 feet to a point; thence South 02° 52' 53" East 63.34 feet to a point; thence South 81° 10' 50" West 197.52 feet to a point; thence North 00° 01' 22" West 20.24 feet to a point; thence North 81° 10' 50" East 176.40 feet to a point; thence North 02° 52' 53" West 66.33 feet to a point; thence North 89° 58' 51" East 226.33 feet to a point; thence South 65° 45' 24" East 133.79 feet to a point; thence South 88° 39' 58" East 239.79 feet to a point; thence North 44° 01' 03" East 10.31 feet to a point; thence South 01° 37' 35" East 27.62 feet to the True Point or Place of Beginning; all as shown on the aforementioned survey prepared by Thompson & Associates, PA dated February 14, 2005.

The property is recorded in Wake County Register of Deeds BOM 2006, pages 361-362, known as Holly Pointe Phase 1A.

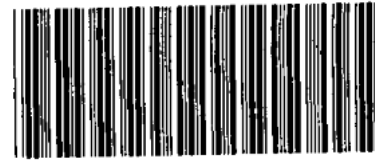
EXHIBIT B

Initial Maximum Annual Assessment

\$ 800.00 per Lot per year

\$ 800.00 per Family Dwelling Unit per year

618593



BOOK:011849 PAGE:02539 - 02567

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



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