

This instrument drafted by: Jonathan W. Anderson
After recording hold: Box 129

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS, CONDITIONS,

AND RESTRICTIONS

AUTUMNWOODS HOMEOWNERS' ASSOCIATION OF CARY, INC.

THE FOLLOWING STATEMENTS ARE REQUIRED BY THE NORTH CAROLINA PLANNED
COMMUNITY ACT:

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED
STATES OF AMERICA OR STATE OF NORTH CAROLINA.

THE DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 21st
day of November, 2018, between Capital Properties of Raleigh, IV, LLC, a North Carolina Limited Liability
Company (hereinafter "Declarant"), and AUTUMNWOODS HOMEOWNERS' ASSOCIATION OF CARY,
INC., (hereinafter "Association") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of WAKE, State of North Carolina, known as AUTUMNWOOD, and being all that land described in the Subdivision, Right-of-Way, and Easement Dedication Plat recorded in Book of Maps 2018, Pages 2007-2013, WAKE County Registry; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of said property; and for the continued maintenance and operation of any recreational and/or common area.

NOW THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Wake, State of North Carolina, and is more particularly described as being all of that property shown on map and survey recorded in Book of Maps 2018, Page 2007, Wake County Registry, plus all the utility and access easements as shown on the aforesaid map. The Declarant hereby subjects the heretofore described property to this Declaration and the jurisdiction of the Association. Additional properties may be subjected to these Declarations within ten (10) years from the date of this instrument.

ARTICLE II

DEFINITIONS

Section 1. “Association” shall mean and refer to AUTUMNWOODS HOMEOWNERS’ ASSOCIATION OF CARY, INC., its successors and assigns.

Section 2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association. DECLARANT EXPRESSLY RESERVES THE RIGHT TO REVISE, MODIFY, RECONFIGURE, RECOMBINE, SUBDIVIDE, REPLAT, OR WITHDRAW THE PROPERTIES AS NECESSARY AT ANY TIME DURING THE DEVELOPMENT PERIOD AS IT, IN ITS SOLE DISCRETION, DEEMS APPROPRIATE

Section 4. “Permanent Common Open Space” shall consist of the Conservation Property and those areas designated on recorded plats of Autumnwood Homeowners’ Association of Cary as such. Such areas shall be dedicated in perpetuity to the common use and enjoyment of the owners. The Declarant will convey all Permanent Common Open Space shown on the various plats of the subdivision to the Association. The Association shall be responsible for the repair, maintenance and repaving as set forth in this Declaration.

Section 5. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space. From time to time, this Declaration uses the term Common Area to refer to Permanent Common Open Space on which improvements and certain amenities may be completed; however, Declarant is under no obligation to complete any improvements or make any representation about any amenities except as expressly stated herein.

Section 6. “Declarant” shall mean and refer to Capital Properties of Raleigh IV, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. “Common Expense” 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 Permanent Common Open Space;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the By-Laws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against common areas;
- (f) Expenses agreed by the members to be common expenses of the Association.

Section 8. “Operating Deficit” is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements and other assessments allowed in the Declaration that are not annual assessments.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner’s Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Permanent Common Open Space and over the common open spaces for access, ingress and egress

from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations and require the outstanding balance on all assessments to be paid in full immediately after notice and an opportunity to be heard under N.C.G.S. § 47F-3-102(11);

(b) The right of the Association to suspend the rights of any Owner thirty (30) or more days delinquent from access to any Permanent Common Space or amenity established by the Association and trespass such Owner from the Permanent Common Space or amenity after notice and an opportunity to be heard under N.C.G.S. § 47F-3-102(11);

(c) the right of the Association to dedicate or transfer all or any part of the Permanent Common Open Space 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 or transfer shall be effective unless an instrument agreement to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded;

(c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Permanent Common Open Space and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; and

(d) the right of the Association to adopt, publish and enforce rules and regulations as provided in Article IX.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Permanent Common Open Space and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Permanent Common Open Space. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Permanent Common Open Space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility and storm drainage easements.

Section 4. Parking Rights. The Association may regulate the parking of boats, trailers and other such items on the Permanent Common Open Space.

Section 5. TV Antennas and Cablevision. The Association may supply cablevision and the cost of this service may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual Lots.

Section 6. Management of Common Area. The Association shall manage and control the Common Area and all improvements thereon (including, without limitation, any furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the community-wide standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment 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. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall

be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B member and shall be entitled to majority voting rights until the happening of either of the following events, whichever occurs earlier:

- (a) when the Declarant conveys all of the Lots it owns to Class A members (the “Development Period”);
- (b) upon the surrender of all Class B membership by the holder thereof or cancellation by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and 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: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney’s fees, management fees as allowed by law, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney’s fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot. Notwithstanding anything herein to the contrary, Declarant may satisfy its obligation for payment of annual assessments on Lots it owns either by paying annual assessments in the amount per Lot assessed for that fiscal year or by paying the Operating Deficit.

With respect to any Lot that is conveyed by Declarant to any other Owner during a fiscal year for which Declarant has elected to fund the Operating Deficit instead of paying annual assessments, for that fiscal year

the annual assessment for such Lot due and payable by such Owner is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that fiscal year from and after the day on which the conveyance occurs and whose denominator is the total number of days in that fiscal year. Such annual assessment is due and payable by the Owner at the time of the conveyance by the Declarant to such Owner.

For any fiscal year of the Association during the Development Period, Declarant may satisfy its obligation for payment of annual assessments on Lots it owns either by paying annual assessments in the amount per Lot assessed for that fiscal year or by paying the Operating Deficit. Unless Declarant otherwise notifies the Board prior to the Board's adoption of a proposed annual operating budget for the next fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the current fiscal year. Declarant has elected to pay the Operating Deficit for the first fiscal year of the Association. Payment of the Operating Deficit may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners. At Declarant's option, the Operating Deficit for any fiscal year may not be assessed against Declarant unless the maximum annual assessment for that fiscal year has been assessed.

Declarant's obligations with respect to payment of annual assessments or payment of the Operating Deficit may be satisfied by Declarant by any combination of the provision of services or materials toward satisfaction of Common Expenses, including (i) payment for such services or materials directly to the providers thereof, or (ii) payment of money to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Permanent Common Open Space, including the

maintenance, repair and reconstruction of private streets, driveways, walks and parking areas situated on the Permanent Common Open Space, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for the use and enjoyment of the Permanent Common Open Space, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Permanent Common Open Space, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, signs, paving, grading, landscaping and any other major expense for which the Association is responsible, and such other needs as may arise. The Association shall also maintain all entry features, and common areas, operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community including the expenses for water and electricity, if any, provided to all such entry features; all storm water detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity); and all property outside of Lots located within the Community which was originally maintained by Declarant.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$500.00 per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to thirty percent (30%) of the previous year's assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a

vote of two-thirds ($\frac{2}{3}$) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Permanent Common Open Space, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($\frac{2}{3}$) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The Board of Directors may levy in any fiscal year of the Association, a Special Assessment payable over not more than the next three (3) succeeding years for the purpose of defraying, in whole or in part, operating deficits or the cost of any construction, reconstruction, repair or replacement of the community facilities, including fixtures and personal property related thereto or upon public lands within the property; provided, however that nothing contained herein shall require the Declarant to become liable for any Special Assessment levied pursuant to this Section.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written Notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the 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 ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Permanent Common Open Space. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association.

Each Owner, by accepting a deed for any Lot, covenants and agrees to timely pay all assessments, together with a late fee after ten (10) days of ten-percent (10%) of the amount of the assessment being overdue or such higher rate as the Board may establish, in compliance with the North Carolina Planned Community Act, General Statutes of North Carolina Sections 47F-1-101 through 47F-3-122, as amended from time to time (the "Act") and otherwise subject to the limitations of North Carolina law), late charges as determined by Board resolution, management fees incurred in connection with delinquency, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee of title shall be jointly and severally liable for any assessment and other charges due at the time of conveyance.

The Board's failure to establish or obtain Member approval of assessment amounts or rates, if required hereunder, or the Board's failure to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay. In such event, each Owner shall continue to pay assessments on the same basis as during the last fiscal year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant for which each Owner is jointly and severally liable. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort from the making of repairs or improvements, or from any other action taken by the Association or Board.

Common Expense caused by negligence or misconduct of an Owner, or a tenant or occupant of Owner may be assessed exclusively against the Owner or the Owner's Lot within ten (10) business days of receiving a written request from an Owner, Mortgagee or other person designated by the Owner, the Association shall furnish to the requesting party or other Person designated in the written request, a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments against the applicable Lot. Such certificate shall be conclusive evidence of payment or non-payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Permanent Common Open Space or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties 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. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Working Capital Fund. At the time of closing of the sale of each unit a sum equal to at least two (2) months assessment for each unit shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing,

shall be inconsistent with the architectural guidelines promulgated by the Association (the “Architectural Guidelines”) unless the Reviewer has granted a variance.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant unless such Owner has provided an electronic mail (e-mail) address and regularly communicated from and to such e-mail address with the Association or any of its constituent members.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require approval from the Declarant, and shall be required to occur within ten (10) years from the date of this instrument, provided, however, that all annexations of additional properties to the original development described in Article I hereof must contain a minimum of five (5) acres, be contiguous to the property described in Article I hereof or property previously annexed. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the Town of Cary Zoning Ordinances.

Section 2. Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation, except approval by the Apex Town Council, if necessary.

Section 3. Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Permanent Common Open Space within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and greenway easements.

ARTICLE VIII

INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following provisions:

(a) *Ownership of Policies.* All insurance policies upon the common area shall be purchased by the Association for the benefit of all the Association and the Owners.

(b) *Coverage.* All buildings and improvements and all personal property included in the Permanent Common Open Space and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards covered by the standard coverage endorsement, and
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.
- (iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) *Liability.* Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. Directors and officers' liability insurance shall be secured by the Association with limits of liability no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) *Premiums.* Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.

(e) *Proceeds.* All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Permanent Common Open Space and facilities held for the Association.

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) *Expense of the Trust.* All expenses of the insurance trustees shall be first paid or provisions made therefor.

(b) *Reconstruction or Repair.* The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front and back yard space of each Lot and the Permanent Common Open Space. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary offices of the Declarant and/or any model used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that for each Lot there shall be permitted up to a total of three (3) dogs or three (3) cats or a combination of dogs and cats not to exceed three (3) in total, no more than two (2) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local laws, codes and ordinances. In no event, however, shall monkeys, snakes, pigs, ferrets, or roosters be permitted in any Lot. Chickens and chicken coops are expressly allowed provided that such coop is secure and kept in a clean and tidy fashion on such terms and conditions as the Association may further require that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 5. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, heated and finished, exclusive of open porches and decks, of less than two thousand (2000) square feet. All yard and setback requirements shall comply with the Town of Cary setback regulations.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 ½) stories in height or thirty-six (36) feet and a private garage for not more than three (3) cars, but not less than two (2), and (with the approval of the Board of Directors of Autumnwood Homeowners' Association of Cary or its Architectural Control Committee) an accessory building or structure for storage or other appropriate use, not in excess of two hundred fifty (250) square feet in area. Private garages, either attached or detached, as provided herein, *shall* be required. In addition, each lot shall contain sufficient off-street parking space for at least two full-sized automobiles. No automobiles shall be parked on any street abutting any of the lots. No lot shall be subdivided without the express consent of the Autumnwood Homeowners' Association of. An owner may let or rent his entire dwelling unit, but no portion of any dwelling unit shall be leased separately from the rest of the unit. No 'for rent' signs of any nature may be posted.

Section 6. Temporary Structures. Except as hereinbefore set forth, no trailer, tent, shack, barn or other out building, except a private garage for not more than three (3) cars, shall be erected or placed on any lot covered

by these covenants. No detached garage shall at any time be used for human habitation, either temporarily or permanently.

Section 7. Fences and Signs. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any lot, without the prior written consent of the Autumnwood Homeowners' Association of Cary or its designated Architectural Control Committee. The committee may issue guidelines detailing acceptable fence styles or specifications, but in no event shall hogwire or chainlink fencing be approved. No signs, except for sale signs when a house is listed for sale, shall be erected or allowed to remain on any lot except with the written consent of the Board of Directors.

Section 8. Accessory Buildings and Other Outdoor Structures. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, doghouses, and greenhouses) shall be placed on any lot without the prior written approval of the Architectural Control Committee, with said committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any lot. Under no circumstances shall metal storage buildings be permitted. All accessory buildings must conform to the same architectural style as the residence located on the same lot. No outside clothes lines, tree houses, playhouses, motorcycles, supplies, tractors, boats, trucks (other than one pick-up truck rated one-half ton or less), trailers, vans (other than one noncommercial van owned and operated on a regular daily basis by the owner-occupant of the lot), campers or other equipment or vehicles, except for operative licensed automobiles, shall be regularly parked or stored in any area on a lot except inside an enclosed building, behind screening approved by the Autumnwood Homeowners' Association of Cary or its designated Architectural Control Committee. Garbage and refuse containers, transformers, air conditioning and other mechanical equipment, including solar and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous. All outdoor equipment and accessories on a lot, such as play structures, benches, sculptures, etc., shall be concealed by approved screening or approved in writing by the Board or Architectural Control Committee as compatible and harmonious with the surroundings.

Section 9. Appearance. Communication towers are expressly prohibited. Stick-built homes are expressly required; that is, no prefabricated or manufactured homes are permitted on any lot. Flat roofs are prohibited, unless approval in writing is obtained from the Board or Architectural Control Committee. All primary fuel storage tanks must be placed underground. Home curtain foundation walls are expressly prohibited unless approval for same is first obtained, in writing, from the Board or Architectural Control Committee. No inoperable motor vehicles may be parked on any lot if visible from any road within the subdivision. Mail shall be delivered to central kiosks.

All driveways and walks must be paved with concrete or brick. All lots on which a dwelling unit is approved and built shall be landscaped in accordance with Town of Cary specifications. Landscaping must be finished upon completion of the dwelling unit for occupancy. Total construction time, from the date of final approval of Plans by the Board or Architectural Control Committee to the completion of the dwelling unit for occupancy, shall not exceed nine (9) months. All buffer areas are to be according to the Town of Cary requirements.

Section 10. Rental Restrictions. Leasing of a residence on a Lot shall not be considered a business activity. Improved Lots may be leased for residential purposes only upon review and approval of a lease by the Board of Directors. No more than ten percent (10%) of residences on the Lots may be leased. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least twelve (12) months, must be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or improvements. In the event an Owner shall rent or lease his or her Lot or any improvements thereon (or any part of either thereof), such Owner shall immediately give to the Association in writing (i) the name of the tenant and the Lot rented or leased; (ii) the current address of such Owner; (iii) a true and complete copy of the lease or rental agreement; and (iv) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, and the Bylaws and that such tenant has been advised of any obligations he may have thereunder as tenant. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular Assessments to the Association, regardless of whether the obligation to pay Assessments has been assumed by the tenant in

such lease or rental agreement. Declarant shall be exempt from the limitations of use and leasing as set out in this Section.

ARTICLE X

EASEMENTS

Section 1. All of the Properties, including Lots and Permanent Common Open Space, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Permanent Common Open Space conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Permanent Common Open Space, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties.

Section 2. All Lots shall be subject to easements for the encroachments constructed on adjacent Lots by Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

Section 3. An easement is hereby established over the Permanent Common Open Space and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, firefighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 4. If any dwelling is located closer than five (5) feet from its lot line, so long as such setback complies with the Town of Cary applicable Zoning Ordinances, the owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and,

upon completion of the work, the owner shall restore the adjoining lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Water and Sewer. All lot owners shall be subject to monthly charges as approved by the proper public authorities for water and sewer for domestic usage.

ARTICLE XI

GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot owners.

Section 4. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS OF

AUTUMNWOODS HOMEOWNERS' ASSOCIATION OF CARY, INC.

AUTUMNWOODS HOMEOWNERS' ASSOCIATION OF CARY, INC.

BY: _____

President

(CORPORATE SEAL)

ATTEST:

Secretary

Section 5. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by Declarant to the Association.

Section 6. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day

(60) delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

ARTICLE XII

ELECTRICAL SERVICE

Declarants reserve the right to subject the above-described Property to a contract with Duke Energy for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke Energy by the Owner of each Lot within said Property.

ARTICLE XIII

EMERGENCY ACCESS

In no case shall the Town of Cary be responsible for failing to provide any emergency or regular fire, police, or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners' association, or occupants.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed, by authority of its Board of Directors, this 21st day of November, 2018.

[Signature Pages Follow]

ATUMWOOD HOMEOWNERS' ASSOCIATION, INC.:

By: [Signature] (SEAL)

Name: WAYNE KOLUCH

Its: Pres.

State of North Carolina - County of Wake

I, the undersigned Notary Public of the County and State aforesaid, certify that Wayne Koluch personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial stamp or seal this 21st day of November, 2018.

My Commission Expires: 3/15/22

[Signature]
Notary Public

CAPITAL PROPERTIES OF RALEIGH IV, LLC:

By: [Signature] (SEAL)

Name: Daniel Stallings Its: -

State of North Carolina - County of Onslow

I, the undersigned Notary Public of the County and State aforesaid, certify that

Daniel Stallings personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial stamp or seal this 21st day of November, 2018.

My Commission Expires: 5/22/2023

[Signature]
Notary Public

