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Wake County,NC 301
Laura M Riddick, Register Of Deeds
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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

NEW HERITAGE TOWNHOMES OF THE GREEN AT SCOTTS MILL

THIS DECLARATION is made on the date hereinafter set forth by Scotts Woods, LLC, a North Carolina limited liability company, referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Wake, State of North Carolina, which is more particularly described as follows:

> ALL of Lots 72 and 88, inclusive, as shown on the plat entitled "The Green at Scotts Mill, Final Plat - Section 3" recorded in Plat Book 2001, Page 0075, in the Office of the Register of Deeds of Wake County, North Carolina ("Wake County Registry").

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

SECTION 1. APPROPRIATE LOCAL GOVERNMENTAL AUTHORITY. "Appropriate Local Governmental Authority" shall mean and refer to the Town of Apex, Wake County or other Appropriate Local governmental authority having jurisdiction over the Properties.

SECTION 2. APPROVED BUILDER. "Approved Builder" shall mean and refer to any person or entity acquiring a Lot from Declarant for the express purpose of constructing a dwelling on the Lot within two (2) years of acquiring the Lot and, without at any time permitting use of the dwelling as a residence, selling the improved Lot.

SECTION 3. ASSOCIATION. "Association" shall mean and refer to New Heritage Townhome Owners Association, Inc., its successors and assigns.

SECTION 4. COMMON ELEMENTS OR COMMON AREA. "Common Elements" or "Common Area" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

> A non-exclusive easement for ingress, egress and regress on, over and upon those area(s) designated "Townhome Association Easement," said easement subject to the right of the owner of each Lot over which the easement extends to have the exclusive use of any patio, unenclosed porch (covered or uncovered), eaves, steps, stoops, or similar improvements which may be constructed as a part of the initial construction of the residence to be located on such Lot or otherwise approved by the Association pursuant to the terms hereof and further subject to all other applicable terms and conditions of this Declaration.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its members, additional property to the Association, which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article XI, Section 4 hereof. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Elements. Improvements, which may include, but shall not be limited to, roadways, retention or detention ponds or erosion control devices, may be located on such additional Common Elements. Except as otherwise provided in Section 47F-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Elements for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed.

The Association also may acquire additional Common Elements with the consent of the Members of the Association entitled to cast at least sixty-seven percent (67%) of the vote of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during Declarant's Development Period no such action shall be effective without Declarant's consent and approval. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Elements must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner and Declarant approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and if required, Declarant, and that such acknowledgments are made a part of the minute book of the Association; and (3) be properly recorded in the Wake County Registry.

The Association shall maintain any retention or detention ponds, rip rap and other drainage or erosion control devices located on the Common Elements now or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control devise, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for 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 a pro rata share of the cost of the maintenance of such pond or erosion control devise.

Declarant does **not** contemplate the construction of any recreational improvements or amenities within the Common Elements (i.e., swimming pool, tennis courts, clubhouse, etc.)

SECTION 5. DECLARANT. "Declarant" shall mean and refer to Scotts Woods, LLC, as well as its successors and assigns pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, easement, and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 6. DECLARANT'S DEVELOPMENT PERIOD. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Wake County Registry, and continuing for so long as Declarant shall have the right to annex any portion of the Additional Property pursuant to the provisions of Article XI, Section 4 hereof or Declarant shall own any portion of the Properties or until such earlier time as Declarant shall file in the Wake County Registry a termination of Declarant's Development Period.

SECTION 7. FHA; VA. "FHA" shall mean and refer to the Federal Housing Administration of the Department of Housing and Urban Development and "VA" shall mean and refer to the Department of Veterans Affairs.

SECTION 8. LOT. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for single-family residential townhome purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 9. MASTER PLAN. "Master Plan" shall mean and refer to the plan(s) for the existing development of the Properties and for the future development of the Properties and the Additional Property as a part of New Heritage Townhomes of The Green at Scotts Mill, now or hereafter approved by the Appropriate Local Governmental Authority, as such plan(s) may be from time to time amended and approved.

SECTION 10. MEMBER. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

SECTION 11. OWNER. "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 12. PERIOD OF DECLARANT CONTROL. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Wake County Registry, and continuing until the earlier of: (i) ten (10) years from the date this instrument is recorded in the Wake County Registry; or (ii) such time as Declarant shall cease to own at least twenty-five percent (25%) of the townhome lots shown on the Master Plan; provided, however, if after the expiration of such period of time, the Master Plan is amended to add additional townhome lots and Declarant, together with all affiliated entities, shall own more than twenty-five percent (25%) of the townhome lots shown on the Master Plan as amended, such period of time shall be reinstated and shall continue until the earlier of: (i) ten (10) years from the date this instrument is recorded in the Wake County Registry; or (ii) such time as Declarant shall cease to own at least twenty-five percent (25%) of the townhome lots shown on the Master Plan.

SECTION 13. PROPERTIES. "Properties" shall mean and refer to that certain real property hereinabove subjected to the terms and conditions of this Declaration, and such additions thereto as may hereafter be subjected to this Declaration pursuant to the provisions of Article XI, Section 4.

SECTION 14. MASTER DECLARATION. "Master Declaration" shall mean and refer to that certain Master Declaration of Covenants, Conditions and Restrictions for The Green at Scotts Mill recorded in Book 8604, Page 793, in the Office of the Register of Deeds, Wake County, North Carolina, as now or hereafter amended pursuant to its terms, including, without limitation, as amended by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions for The Green at Scotts Mill recorded in Book 8680, Page 1562, in said Registry. All of the property which is now a part of the Properties, and all of the property which, pursuant to Article XI, Section 4 hereof, is hereafter annexed to and made a part of the Properties, shall be subject to the Master Declaration.

SECTION 15. MASTER ASSOCIATION. "Master Association" shall mean and refer to The Green at Scotts Mill Master Owners Association, Inc., a North Carolina non-profit corporation formed for the purposes set forth in the Master Declaration, including without limitation, the purpose of maintaining, preserving and administering the "Master Association Common Elements," as hereinafter defined.

SECTION 16. MASTER ASSOCIATION COMMON ELEMENTS. "Master Association Common Elements" shall mean and refer to all property owned by the Master Association for the use and enjoyment of the members of the Master Association as more fully described in the Master Declaration and defined therein as the "Common Elements."

ARTICLE II

PROPERTY RIGHTS

SECTION 1. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot. Each Owner also shall have a non-exclusive easement for egress and ingress over the Common Elements to the extent necessary to provide access to a Lot for utilities serving that Lot. The right of access for necessary ingress and egress to the Lot and utility services cannot be suspended by the Executive Board of the Association for violation of this Declaration or non-payment of assessments. The Owners' easement rights are subject to the following limitations:

(a) easements, conditions and restrictions of record encumbering the Common Elements at the time of conveyance to the Association and the easements herein reserved by Declarant or created in favor of Declarant or the Association, including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to permit the use of and to charge reasonable admission and other fees for special or extraordinary uses of the Common Elements;

(c) the right of the Association, acting through the Executive Board without Member, mortgagee or agency approvals, to suspend the right of any Member, and the rights of such Member's household, tenants, guests and invitees to use recreational facilities or other Common Elements (to the extent that access and utility service are not impaired) for a period not to exceed 60 days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid;

(d) the right of the Association, acting through the Executive Board without Member, mortgagee or agency approvals, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements which are not inconsistent with and do not interfere with the intended Common Elements and otherwise for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(e) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the votes of the Members other than Declarant, to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such conveyance shall reduce total open space area below applicable zoning requirements, interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common

Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

(f) the right of the Association, acting through the Executive Board without Member, mortgagee or agency approvals, to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicles's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

(g) the right of the Association, with the consent of the Members entitled to cast at least eighty (80%) of the votes of the Members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the votes of the Members other than Declarant, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and further provided that a lender's rights, in the event of default upon any mortgage or deed of trust on the Common Elements, are limited to, after taking possession of such Common Elements, charging reasonable admission and other fees as a condition of continued enjoyment by members, and, if necessary, to a wider range of users and upon satisfaction of the mortgage or deed of trust, such Common Elements are returned to the Association with full restoration of Member's rights; and

(h) the right of the Association, acting through the Executive Board without Member, mortgagee or agency approvals, consistent with applicable zoning and subdivision ordinances, to convey to Declarant, a Lot Owner or the Master Association portions of the Common Elements for the purpose of correcting unintentional conveyances of Common Elements, eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Elements or exchanging portions of the Common Elements for other portions of the Properties; provided, however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and provided further that no such conveyance shall reduce total open space area below applicable zoning requirements, materially affect development plans on file with FHA or VA, if FHA or VA insured loans have been obtained secured by Lots, and all Lots previously adjacent to the Common Elements remain so located, unless the Owners of the Lots approve the transfer.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Elements and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall have a term of not less than one (1) month. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

SECTION 4. RULES AND REGULATIONS. The Executive Board of the Association may establish reasonable rules and regulations concerning the use of the Common Elements and improvements located thereon. Such rules and regulations may provide for permanent and/or temporary assignments of parking spaces and may establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board. In addition, such rules and regulations may include rules concerning pet ownership and may restrict the number, type and size of domestic pets. The Association may impose reasonable monetary fines and other sanctions for the violation established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Article XI hereof. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Executive Board of the Association or by the Members of the Association entitled to cast at least sixty-seven percent (67%) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Declarant's Period of Development, Declarant must also consent to such action.

SECTION 5. PROPERTY RIGHTS PURSUANT TO MASTER DECLARATION. As more particularly set forth in the Master Declaration and the governing documents of the Master Association, each Lot Owner, as a member of the Master Association, and subject to the terms and conditions thereof, shall have the right to use and enjoy certain Master Association Common Elements and any improvements now or hereafter located thereon.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. VOTING MEMBERS. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant, shall be a voting Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Except as otherwise provided in Section 2 below, on all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

SECTION 2. CLASSES OF MEMBERSHIP. The Association shall have two classes of voting membership:

Class A The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant during any Period of Declarant Control. Class A Members shall be entitled to one (1) vote for each Lot owned.

Class B Declarant shall be the Class B Member and Declarant shall be entitled to three (3) votes for each lot shown on the Master Plan which has not been conveyed by Declarant to a Class A Member. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, the Master Plan is amended to add additional lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to three (3) votes for each lot owned) which exceed those of the Class A membership; or,

(ii) ten(10) years from the date this instrument is recorded in the Wake County Registry.

SECTION 3. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION. During any Period of Declarant Control, Declarant shall have the right to designate and select all of the members of each Executive Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the Properties. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association. The undertakings and contracts entered into by or on behalf of the Association (including contracts for the management of the Condominium) during the time Declarant has the right to appoint the members of the Executive Board of the Association shall be binding upon the Association in the same manner as though such undertakings and contracts had been entered into by or on behalf of the Association after the Executive Board duly elected by the membership of the Association takes office; provided, however that (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the Members at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Executive Board duly elected by the membership of the Association takes office, effective upon written notice to the other party. Notice of the substance of the provisions of this Article shall be set out in each contract entered into by or on behalf of the Association during the time Declarant has the right to appoint a majority of the members of the Executive Board of the Association.

<u>SECTION 4. SPECIAL NOTICE AND QUORUM REQUIREMENTS</u>. Written notice of any meeting of the Members of the Association called for the purposes of considering an amendment to this Declaration or any extraordinary action of the Association described in Section 5 below shall: (i) be given all Members at least 25 days but not more than 60 days in advance to all Members (at least 15 days but not more than 60 days advance notice is required in the case of a meeting for other purposes); (ii) state the purpose of the meeting and contain a summary of any amendments or extraordinary actions proposed; and (iii) contain a copy of the proxy that can be cast in lieu of attendance at the meeting. The presence at any such meeting of Members entitled to cast and/or proxies entitled to cast at least twenty percent (20%) of the votes of the Membership of the Association shall constitute a quorum.

<u>SECTION 5. EXTRAORDINARY ACTIONS OF THE ASSOCIATION</u>. Unless a larger percentage of Member approval is expressly required elsewhere in this Declaration or by law, the following extraordinary actions of the Association shall require the consent and approval of the Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at a meeting of the Association duly called for such purpose, such vote to include at least fifty-one percent (51%) of the votes of all Members present, in person or by proxy, and voting at such meeting other than the Declarant, or, if the Executive Board elects not to call a meeting of the Members with the written consent of the Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the total authorized votes of all Members of the Association other than Declarant, said consent having been obtained after written notice to all Members of the proposed amendment:

(a) determining not to require professional management if that management has been required by the Association documents, a majority of eligible mortgagees or a majority vote of the Members;

(b) expanding the Association to include land not previously described as Additional Property which increases the overall land area of the project or number of Lots by more than 10 percent;

(c) making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating budget.)

In addition, unless a larger percentage of Member approval is expressly required elsewhere in this Declaration or by law, the following extraordinary actions of the Association shall require the written consent of the Members entitled to cast at least eighty percent (80%) of the total authorized votes of all members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the total authorized votes of all Members of the Association other than Declarant, said consent having been obtained after written notice to all Members of the proposed action:

(a) dissolution of the Association except pursuant to a consolidation or merger;

(b) conveyance of all Common Elements;

(c) merger or consolidation of the Association;

(d) abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended Common Elements; (ii) dedicating Common Elements as required by a public authority; or (iii) limited boundary-line adjustments made in accordance with the provisions of this Declaration); or

(e) using insurance proceeds for purposes other than construction or repair of the insured improvements.

SECTION 6. MASTER ASSOCIATION VOTING RIGHTS. As more particularly set forth in the Master Declaration and the governing documents of the Master Association, and subject to the terms and conditions thereof, each Owner shall be a voting member of the Master Association.

ARTICLE IV

COVENANT FOR MAINTENANCE AND 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 for 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: (a) to the Association: (i) annual and other assessments and charges provided for herein, together with interest and late fees, costs and reasonable attorney's fees;

(ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Elements; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months. All assessments and charges provided for herein, together with interest, late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, Wake County, North Carolina. Each such assessment and charge, together with interest, late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes assessed against the Common Elements; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), drives and parking areas within the Common Elements; the procurement and maintenance of liability insurance in accordance with the By-Laws; the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Elements; the maintenance of entranceways, landscaping and lighting of Common Elements, road medians and islands and entranceways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefor within the Properties; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Elements; the exterior maintenance of the Lots and the dwellings located thereon as herein provided; the employment of attorneys and other agents 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, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements 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.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his Membership interest therein, except as an appurtenance to his Lot. When any Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS; MAXIMUM ANNUAL ASSESSMENT.

(a) At least thirty (30) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be NINE HUNDRED and No/100 Dollars ($900.00) per Lot, and may be collected in monthly installments of SEVENTY-FIVE and No/100 Dollars ($75.00) per Lot.

(c) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall automatically increase by the greater of ten percent (10%) per year over the maximum annual assessment for the previous year or the percentage increase in the U.S. Department of Urban Price Index - All Urban Consumers (1982-84=100) when comparing the two most current years for which such index is available. If at any time such index is no longer computed or published, the Executive Board of the Association shall select a comparable index reflecting the increase of costs incurred by the Association.

(d) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least sixty-seven percent (67%) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(e) The Executive Board may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least sixty-seven percent (67%) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than fifteen (15) 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 twenty percent (20%) 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 (½) 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 6. RATE OF ASSESSMENTS. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis; provided, however, that so long as the dwelling on any Lot owned by Declarant or any affiliated entity, or any Approved Builder, is unoccupied as a residence, the amount of the assessment for each such Lot shall be an amount equal to twenty-five percent (25%) of the regular assessments fixed for each Lot.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is made subject to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot to any purchaser other than a successor Declarant, an affiliated entity of Declarant or an Approved Builder, the purchaser(s) thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assesement established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working

Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate per annum from time-to-time established by the Executive Board of the Association not to exceed eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association, for assessments not paid within thirty (30) days after the due date and after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights of access to Lots during any period that assessments or other amounts due and owning to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, late fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of his Lot nor shall damage to or 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 10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. SUBORDINATION OF THE LIEN TO MORTGAGES. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust or deed in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which become due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Owners including such purchaser, its heirs, successors, and assigns. Such sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer; provided, however, no such sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 13. MASTER ASSOCIATION ASSESSMENTS. All of the property which is now a part of the Properties, and all of the property which, pursuant to Article XI, Section 4 hereof, is hereafter annexed to and made a part of the Properties, shall be subject to the Master Declaration. The Master Declaration provides that the owner(s) of each "Tract," as defined in the Master Declaration, including the Owner(s) of each Lot, shall be members of the Master Association. The Master Declaration provides that all of the members of the Master Association are required to pay assessments to the Master Association to be used for the maintenance, preservation and administration of certain Master Association Common Elements and other purposes set forth for in the Master Declaration. In addition, the owners of certain Tracts to which "Limited Common Elements" are allocated shall be subject to Limited Common Elements Assessments. In addition to the assessments which may be levied by the Association pursuant to the provisions of this Declaration, the Association, in the sole discretion of its Executive Board, may elect to collect, on behalf of the Master Association, the assessments levied by the Master Association against the Lot Owners. The Association, in the sole discretion of its Executive Board, also may elect to serve as the Master Association's attorney-in-fact for the purpose of enforcing the collection of such assessments and any lien securing the same.

ARTICLE V

ARCHITECTURAL CONTROL

No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping or other work which in any way alters the exterior of any portion of the Properties or the improvements located thereon from their natural or improved state existing on the date such property was first conveyed in fee by the Declarant to an Owner other than Declarant or by Declarant to the Association shall be commenced, erected or maintained upon any portion of the Properties and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, 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 Declarant, for so long as Declarant or any Affiliate owns any Lot or Declarant has the right to annex any Additional Property pursuant to Section 4, Article XI hereof, and thereafter by the Community Development Review Committee appointed by the Executive Board of the Master Association pursuant to the Master Declaration (the "Community Development Review Committee") in accordance with the procedures set forth in the Master Declaration. Notwithstanding the foregoing, Declarant may at any time prior to the expiration of the review rights herein reserved elect to assign to the Community Development Review Committee of the Master Association all or any of its architectural review rights hereunder, all of which rights and obligations are assignable and may be apportioned. Any such assignment by Declarant shall be in writing and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. From and after the effective date of such assignment, the Community Development Review Committee of the Master Association shall assume all such assigned architectural review rights and obligations.

ARTICLE VI

MAINTENANCE

SECTION 1. MAINTENANCE TO BE PERFORMED BY THE ASSOCIATION. The Association shall maintain the Common Elements and shall maintain the grounds of each Lot which is subject to assessments hereunder (except for any enclosed privacy area, which area shall be maintained by the Owner(s) of the Lot on which the residence is located as set forth in Section 2 below), as follows: mow, seed and fertilize all grassed areas, mulch, remove dead or diseased trees or shrubs if such trees or shrubs existed at the time Declarant initially conveyed the Common Elements or the Lot on which the tree or shrub is located, replace dead or diseased trees or shrubs planted by the Declarant or the Association and prune all trees or shrubs planted by the Declarant or the Association. In addition, the Association shall provide exterior maintenance for the dwelling located on each Lot which is subject to assessments hereunder, as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces (including doors and garage doors, but excluding glass surfaces, window or door screens, any storm doors installed by Owners and garage door openers) and other exterior improvements (including railings and fencing, but excluding porch flooring and patio surfaces, which shall be maintained by the Owner(s) of the Lot on which such improvements are located). Such exterior maintenance shall not include the exterior maintenance to be preformed by the Owners as provided in Section 2 below. In the event that the need for any maintenance, repair or replacement required hereunder to be preformed by the Association is caused through the willful or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

SECTION 2. MAINTENANCE TO BE PERFORMED BY THE OWNERS. Each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all glass surfaces, window or door screens, any storm doors installed by Owner (any such installation being subject to Article V hereof), porch flooring, patio surfaces, air conditioning and heating equipment and all utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Lot which are not publicly maintained. Each Owner also shall be responsible for the maintenance of any enclosed privacy area. In the event that the Owner neglects or fails to maintain his or her Lot and/or the exterior of his or her dwelling in a manner consistent with other Lots and dwellings within the Properties, the Association may provide such exterior maintenance and all cost incurred by the Association in providing such exterior maintenance shall be added to the annual assessment for such Lot and subject to the lien rights described in Article IV; provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Associations intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a manner consistent with other Lots and dwellings within the Properties shall be made by the Executive Board of the Association, in its sole discretion.

SECTION 3. EASEMENT TO PERFORM MAINTENANCE. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

ARTICLE VII

RESTRICTIONS

SECTION 1. LAND USE. No Lot shall be used except for single-family residential townhome purposes; provided, however, Declarant or any affiliated entity or, with the express consent of Declarant, any Approved Builder may use any Lot owned or leased by Declarant, such affiliate or Approved Builder as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of any portion of the Properties, the Additional Property or any portion of the property which has been subjected to the Master Declaration or which pursuant to its terms may be subjected to the Master Declaration (the "The Green at Scotts Mill Property").

SECTION 2. DWELLING SPECIFICATIONS. No dwelling shall be erected or allowed to remain on a Lot if the main structure, exclusive of open porches, decks and garages, contains less than Nine Hundred Sixty (960) square feet of heated floor area.

SECTION 3. NUISANCE. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot or other area within the Properties shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture. If a clothesline is placed on any Lot, it shall be an umbrella type clothesline and it shall be so screened that it is not visible from any adjacent Lot or street.

SECTION 4. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on the Common Elements or on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with (i) all applicable laws and ordinances; and (ii) such rules and regulations pertaining thereto as the Executive Board may adopt from time to time, which rules and regulations may, among other things, restrict the number, type and size of domestic pets.

SECTION 5. OUTSIDE ANTENNAS. Except as such restrictions may be prohibited under applicable regulations promulgated by the Federal Communications Commission or other applicable state, federal or local laws or regulations, (i) no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within the Properties without the prior written permission of the Community Development Review Committee and (ii) any antenna or satellite dish erected on any Lot within the Properties shall be affixed to the dwelling, shall be a color which blends with its surrounds, shall have a mask only as high as reasonably necessary to receive the intended signal and shall not be visible from any street.

SECTION 6. PARKING. No boats, trailers, recreational vehicles, campers or other similar equipment or vehicles, excluding specifically operative automobiles, non-commercial trucks and passenger vehicle vans and mini-vans, shall be parked or stored within the Common Elements, or on any Lot unless completely enclosed within a garage. No recreational vehicles, campers or other like equipment or vehicles shall be located or installed on any Lot or the Common Elements to be used as a residence. Commercial vehicles shall not be parked or stored on any Lot or the Common Elements within the Properties; provided, however, the foregoing shall not be construed to prevent the temporary, nonrecurrent parking of such vehicle on a Lot for a period not to exceed 24 hours or during any period the Lot is being serviced by such vehicle.

SECTION 7. SUBDIVISION OF LOTS. Except as permitted under Article I, Section 7, no Lot shall be subdivided and no street shall be laid out or open across or through any Lot, without the prior written consent of Declarant, during Declarant's Development Period, and thereafter except with the prior written consent of the Association.

SECTION 8. SIGNS. No sign shall be placed or allowed to remain on any Lot except for ONE (1) "For Sale" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than SEVENTY TWO (72) consecutive hours. No sign deemed by the Association, the Community Development Review Committee or Declarant to be a nuisance or a detriment to the Properties, the Additional Property or The Green at Scotts Mill Property shall be permitted to be erected or to remain on any Lot. Notwithstanding the foregoing, during Declarant's Development Period, Declarant or any affiliate or, with the express consent of Declarant, any Approved Builder, shall have the right to erect and maintain signs within the Common Elements or on any Lot owned or leased by Declarant or such affiliate or Approved Builder for the purpose of advertising and promoting the sale of any portion of the Properties or the Additional Property.

SECTION 9. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the foregoing, Declarant and builders or contractors approved by Declarant may maintain temporary improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

SECTION 10. FENCES OR WALLS. No fence, wall or other enclosure shall be constructed on any Lot without first obtaining the approval of the Community Development Review Committee as provided in Article V of this Declaration. No portion of any fence erected on any Lot may exceed six (6) feet in height and chain link fences are not permitted. Notwithstanding the foregoing, Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Elements to enclose retention ponds and for other purposes without the approval of the Community Development Review Committee, such fences and other enclosures to become a part of the Common Elements to be maintained by the Association.

SECTION 11. LAKES AND PONDS. The use of any lake or pond which is a part of the Common Elements is subject to rules and regulations from time to time promulgated by the Association, which rules and regulations, in the sole discretion of the Executive Board of the Association, may prohibit or limit the use of boats, fishing and swimming. In addition, such rules and regulations may provide for access to any such lake or pond only through designated portions of the Common Elements.

ARTICLE VIII

EASEMENTS

SECTION 1. UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Elements as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Elements such additional easements as are necessary or desirable for the providing of service or utilities to the Common Elements or Lots.

SECTION 2. SIGNS. The Association shall maintain all subdivision signs and landscaping and lighting surrounding same now or hereafter erected within the Common Elements. The costs of all such maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. Further, during Declarant's Development Period, Declarant shall have the right to erect within the Common Elements additional subdivision signs and landscaping and lighting surrounding the same to be maintained by the Association as herein provided and to erect and maintain signs within the Common Elements for the purpose of advertising and promoting the sale of any portion of the Properties, the Additional Property or The Green at Scotts Mill Property.

SECTION 3. EASEMENTS RESERVED BY DECLARANT. Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant or any affiliated entity of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant or any affiliate, their respective successors and assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for the use of all utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Property.

SECTION 4. ENCROACHMENTS. In the event that any improvements on a Lot shall encroach upon any Common Elements or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

ARTICLE IX

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of any annual financial statement or report of the Association.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Material Amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the this Declaration or the planned unit development hereby created (said notice to be given at least thirty (30) days prior to any action) or any proposed extraordinary action of the Association described in Article III, Section 5 hereof.

(c) To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof, resulting in losses greater than 10% of the annual budget for the Association.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) Upon the demand of a majority of Institutional Lenders, to require professional management of the Association or to demand an audit of the Association's financial records.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE X

PARTY WALLS

SECTION 1. GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

SECTION 2. REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make the use of the wall in proportion to such use.

SECTION 3. DESTRUCTION BY FIRE OR OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall constitute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 4. WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repairing any damage resulting from such exposure.

SECTION 5. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 6. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE XI

GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Owner(s) of each Lot shall be governed by and shall comply with the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by any Owner shall entitle the Association or the Owner(s) of any of the other Lots to the following relief:

(a) 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, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. The Association shall have the right to request that 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.

(b) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to assess reasonable fines against an Owner for violations of this Declaration the Bylaws of the Association or the Association's published rules and regulations by such Owner, or such Owner's family, guests, invitees and lessees in an amount not to exceed $150.00 for each violation, and without further hearing, for each day after the decision that the violation occurs. Such fines shall be deemed to be assessments as set forth in Article IV of the Declaration and if not paid within thirty (30) days after notice and demand therefor, the Association shall be entitled to the remedies set forth in the Declaration for the enforcement and collection of delinquent assessments.

(c) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of this Declaration or the Bylaws, Articles or rules and regulations of the Association. If it is decided that a suspension of privileges or services provided by the Association should be imposed, the suspension may be continued without further hearing until the violation is cured.

(d) If an Owner is legally responsible for damage inflicted on any Common Elements, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover damages from the responsible Owner. If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner. When any such claim for damages against an Owner or the Association is less than or equal to the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Executive Board of the Association to determine if an Owner is responsible for damages to any Common Elements or the Association is responsible for damages to any Lot. If the Executive Board fails to appoint an adjudicatory panel to hear such matters, such hearings shall be held before the Executive Board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statute 7A-210. When the such claim exceeds the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47F-3-116 of the Planned Community Act. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

(e) In any proceeding arising because of an alleged default by a Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

(f) The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

(g) All rights, remedies and privileges granted to the Association or the Owners, pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

(h) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants and restrictions of this Declaration shall run 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 unless terminated or amended as hereinafter provided. This Declaration and the planned unit development hereby created may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association; provided, however, during Declarant's Development Period, this Declaration may not be terminated without Declarant's consent. This Declaration and the planned unit development hereby created may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association; provided, however, during Declarant's Development Period, this Declaration may not be terminated without Declarant's consent. This Declaration may be amended only with the affirmative vote of the Members to which at least sixty-seven percent (67%) of the votes of the Association are allocated, such vote to include at least fifty-one percent (51%) of the votes of all Members present, in person or by proxy, and voting at such meeting other than the Declarant, or, if the Executive Board elects not to call a meeting of the Members, with the written consent of the Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the total authorized votes of all Members of the Association other than Declarant, said consent having been obtained after written notice to all Members of the proposed amendment; provided, however, Declarant may unilaterally terminate or restrict any right herein reserved in favor of Declarant by recording in the Wake County Registry a notice of such termination or restriction; and provided further, during Declarant's Development Period, no Material Amendment to this Declaration shall be effective without Declarant's consent, no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection and no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written minutes of the meeting of the Members at which the amendment was approved or written acknowledgment(s) signed by the Owners approving the amendment and, if required, Declarant, and that such minutes or acknowledgments, as the case may have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Wake County Registry. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for 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 a pro rata share of the cost of the maintenance of all permanent retention or detention ponds.

SECTION 4. ANNEXATION.

(a) Except as provided in Section 3 of Article I with respect to Declarant's right to convey additional Common Elements to the Association and as provided in Subsection (b) below, additional residential property and Common Elements may be annexed to the Properties only with the affirmative vote of the Members to which at least sixty-seven percent (67%) of the votes of the Association are allocated, such vote to include at least fifty-one percent (51%) of the votes of all Members present, in person or by proxy, and voting at such meeting other than the Declarant, or, if the Executive Board elects not to call a meeting of the Members, with the written consent of the Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, such consent to include the consent of the Members entitled to cast at least fifty-one percent (51%) of the total authorized votes of all Members of the Association other than Declarant, said consent having been obtained after written notice to all Members of the proposed annexation; provided, however, during any Development Period, Declarant must also consent to such action.

(b) All or any portion of the property described on Schedule A, attached hereto and incorporated herein by this reference, together with any property located adjacent to the Properties (the "Additional Property") may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration; provided, however, the voting rights and assessment obligations of Lots added shall be the same as the voting rights and assessment obligations of the Lots hereby made subject to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

<u>SECTION 5. FHA/VA APPROVAL</u>. During any period of Declarant Control, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs provided that FHA or VA loans have been obtained to purchase Lots:

(a) any extraordinary action of the Association described in Article III, Section 5 of this Declaration;

(b) termination of this Declaration or other termination of the planned unit development hereby created; or

(c) any amendment to this Declaration adding, deleting or modifying any provision regarding any of the following (each herein referred to as a "Material Amendment"):

(i) Assessment basis or assessment liens;

(ii) Any method of imposing or determining any charges to be levied against individual unit owners;

(iii) Reserves for maintenance, repair or replacement of Common Elements improvements;

(iv) Maintenance obligations;

(v) Allocation of rights to use Common Elements;

(vi) Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;

(vii) Reduction of insurance requirements;

(viii) Restoration or repair of Common Elements improvements;

(ix) The addition, annexation or withdrawal of land to or from the project, except for the annexation of all or any portion of the Additional Property as permitted pursuant to Article XI, Section 4(b);

(x) Voting Rights;

(xi) Restrictions affecting leasing or sale of a unit; or

(xii) Any provision which is for the express benefit of mortgagees.

SECTION 6. AMPLIFICATION. The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

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