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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
UPCHURCH FARMS SUBDIVISION
AND TOWNS OF UPCHURCH FARMS SUBDIVISION

CONTENTS

	Beginning Page No.
Preamble	<u>1</u>
Article I: Definitions	<u>3</u>
Section 1 - Association	
Section 2 - Subassociation	
Section 3 - Association Common Area	
Section 4 - Subassociation Common Area	
Section 5 - Common Area	
Section 6 - Declarant	
Section 7 - Lot	
Section 8 - Member	
Section 9 - Owner	
Section 10 - Properties	
Section 11 - Unit or Dwelling	
Section 12 - Builder	
Article II: Property Subject to this Declaration	<u>4</u>
Section 1 - Existing Property	
Section 2 - Annexation by the Declarant	
Section 3 - Annexation by the Members	
Section 4 - Conveyance of Common Area in Annexed Areas	
Article III: Membership and Voting Rights	<u>6</u>
Section 1 - Membership	
Section 2 - Voting Rights	
Article IV: Property Rights	<u>7</u>
Section 1 - Owners' Easements of Enjoyment and Access	
Section 2 - Delegation of Use	
Section 3 - Conveyance of Title to the Association	
Section 4 - Regulation and Maintenance of Association Common Area Easements	
Section 5 - Regulation and Maintenance of a Pond or Lake	

Article V: Covenant for Maintenance Assessments

10

- Section 1 - Creation of the Lien and Personal Obligation of Assessments
- Section 2 - Purposes of Assessments
- Section 3 - Maximum Annual Assessment
- Section 4 - Special Assessments
- Section 5 - Assessment Rate; Collection Period
- Section 6 - Notice and Quorum for any Action Authorized
Under Sections 3 and 4
- Section 7 - Date of Commencement of Annual Assessments;
Amount of Initial and Subsequent Annual Assessments;
Certificate of Payment;
- Section 8 - Effect of Nonpayment of Assessments; Remedies
- Section 9 - Subordination of the Lien to Mortgages
- Section 10 - Exempt Property
- Section 11 - Working Capital Fund
- Section 12 - Individual Expense Assessments

Article VI: Rights of Lenders

14

- Section 1 - Books and Records
- Section 2 - Notice to Lenders
- Section 3 - Approval of Owners and Holders of First Deeds of Trust
- Section 4 - Payment of Taxes and Insurance Premiums

Article VII: Easements

15

- Section 1 - Access and Utility Easements
- Section 2 - Development Easement and Right of Entry
- Section 3 - Easements for Governmental Access
- Section 4 - Owners' Easement and Right of Entry
for Repair, Maintenance and Reconstruction
- Section 5 - Easement for Initial Encroachments

Article VIII: Architectural Control

17

Article IX: Use Restrictions

18

- Section 1 - Prohibited Uses
- Section 2 - Prohibited Activities; Businesses
- Section 3 - Minimum Dwelling Size
- Section 4 - Temporary Structures
- Section 5 - Signs
- Section 6 - Animals
- Section 7 - Antennae; Satellite Dishes
- Section 8 - Clotheslines
- Section 9 - Garbage; Unsightly Storage

- Section 10 - Lease of Dwelling
- Section 11 - Parking
- Section 12 - Fines
- Section 13 - Adoption of Rules

Article X: General Provisions

- Section 1 - Enforcement
- Section 2 - Severability
- Section 3 - Amendment
- Section 4 - FHA/VA Approval
- Section 5 - Non-Liability of the Governmental Entities
- Section 6 - Subdivision of Lots
- Section 7 - Declarant's Right to Change Development
- Section 8 - Insurance

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
UPCHURCH FARMS SUBDIVISION
AND TOWNS OF UPCHURCH FARMS SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **TRITON UPCHURCH, LLC**, a North Carolina Limited Liability Company, (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant has heretofore acquired certain real property located in Wake County, North Carolina, more fully described in the deed recorded in Book 8771, Page 424, and Deed of Correction recorded in Book 8902 at page 2610, Wake County Registry, and has an Option to acquire certain real property located in Wake County, North Carolina, more fully described in Memorandum of Option recorded in Book 8771 at page 458, Wake County Registry, which Declarant is currently developing into a residential community known as **UPCHURCH FARMS SUBDIVISION** (hereinafter sometimes referred to as "**UPCHURCH FARMS**" or the "Single-Family Subdivision") and **TOWNS OF UPCHURCH FARMS SUBDIVISION** (hereinafter referred to as "**TOWNS OF UPCHURCH FARMS**" or the "Townhome Subdivision"), hereinafter collectively referred to as the "**Subdivision**"; and

WHEREAS, said Single-Family Subdivision will consist of detached residential dwellings and said Townhome Subdivision will consist of multi-family townhomes; and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area and to enforce the covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization or organizations to own, maintain and administer the Association Common Areas, as hereinafter defined, to administer and enforce covenants and restrictions, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the **UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.**, (sometimes referred to herein as the "Association") for the purpose of exercising the aforesaid functions; and

WHEREAS, Declarant has deemed it advisable to create a separate organization to own, maintain, and administer the Subassociation Common Areas, as hereinafter defined, specific only to the Towns of Upchurch Farms Subdivision, to administer and enforce covenants and restrictions specific only to the Towns of Upchurch Farms Subdivision, and to collect and disburse the additional assessments and charges created in an Additional Declaration of Covenants Conditions and

Restrictions Specific to Towns of Upchurch Farms, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC. (sometimes referred to herein as the "Subassociation") for that purpose;

WHEREAS, all property owners, regardless of whether owners of property located in Upchurch Farms Subdivision or Towns of Upchurch Farms Subdivision, benefit from the common areas of Upchurch Farms Subdivision and shall be subject to this Declaration, however, only those owners of property located in Towns of Upchurch Farms will be subject to the Additional Declaration of Covenants, Conditions and Restrictions Specific to Towns of Upchurch Farms Subdivision;

NOW, THEREFORE, Declarant declares that the real property described in Section 1 of Article II of this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Subassociation" shall mean and refer to the TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., A North Carolina non-profit corporation, its successors and assigns.

Section 3. "Association Common Area" shall mean and refer to any real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise for the common use and enjoyment by the Owners of Lots within the Properties. The Association Common Areas to be owned by the Association shall be described in Deeds to the Association, and shall include without limitation, areas designated common areas, common properties, common elements area, open space, landscape easements, landscaped medians, sign easements, private streets, private parking areas, sewer and water lines not located within any public easement or public street right of way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, stormwater retention or detention facilities and storm drainage pipes serving more than one lot and located outside any public street and not otherwise maintained by any governmental authority.

Section 4. "Subassociation Common Area" shall mean and refer to any real property, together with any improvements thereon, owned by the Subassociation, whether in fee, by easement or otherwise for the common use and enjoyment by the Owners of Lots within the Townhome Subdivision. The Subassociation Common Areas to be owned by the Subassociation shall be described in Deeds to the Subassociation, and shall include without limitation, areas designated common areas, common properties, common elements area, open space, landscape easements, landscaped medians, sign easements, private streets, private parking areas, sewer and water lines not located within any public easement or public street right of way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, stormwater retention or detention facilities and storm drainage pipes serving more than one lot and located outside any public street and not otherwise maintained by any governmental authority.

Section 5. "Common Area" shall mean and refer to all Association Common Area and Subassociation Common Area, jointly.

Section 6. "Declarant" shall mean and refer to TRITON UPCHURCH, LLC. It shall also mean and refer to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an Assignment of Declarant's Rights recorded in the Wake County Registry.

Section 7. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association or any Subassociation Common Area owned in fee by the Subassociation, and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 8. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation. Any reference to an Owner in the masculine gender shall be deemed to include the feminine or neuter gender, and any reference to an Owner in the singular shall be deemed to include the plural, and vice versa.

Section 10. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant said Article II.

Section 11. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether as Owners or tenants or lessees of the Owner thereof.

Section 12. "Builder" shall mean any entity or person to whom an unimproved lot is sold or conveyed for the purpose of building a residential dwelling or unit.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.

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

Section 2. Annexation by the Declarant.

a. Annexation Without Consent of the Members. At any time prior to December 31, 2007, additional lands within the property described in Exhibit B to this Declaration (hereinafter the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and

therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the Property to be annexed, provided, however, that such property must be contiguous to property already subject to this Declaration and must be approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Any or all of the Exhibit B Property may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

b. Annexation With Consent of the Members. At any time that Declarant owns any land within the Properties, Declarant may, with the consent of the Members as set forth in this subparagraph, annex additional property not within the boundaries of the Exhibit B Property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the Class A votes cast, in person or by proxy, at a duly-called meeting of the Members at which a quorum is present, which meeting shall have been conducted pursuant to a Notice of Meeting which shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of Annexation executed by the Declarant and the Association extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to vote on the proposed annexation into the Association of the following property:

[Property Description as set forth in the Notice of Meeting]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of annexation; and _____ votes were cast against annexation. Accordingly, the motion to annex the property described above was approved.

[President/Secretary]

Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property

pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

Section 3. Annexation by the Members. At any time after December 31, 2007, the Members may annex additional property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the Members of the Association at a duly-called meeting of the members, which meeting shall have been conducted pursuant to a Notice of Meeting which Notice shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of Annexation executed by the Association extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in form substantially similar to that set forth in Section 2.b of this Article II.

Any property annexed pursuant to this Section 3 may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

Section 4. Conveyance of Common Area in Annexed Areas. All common areas located in any annexed area shall be conveyed to the Association or Subassociation, as is appropriate, prior to the sale of any lot within the annexed area. All Common Areas shall be conveyed in the same manner and subject to the same exceptions as set forth in Article IV, Sec. 3 of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights.

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and by any builder(s) who or which acquires such Lot(s) from the Declarant for the purpose of constructing a residence thereon and which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. Declarant and such builder(s) shall be entitled to three (3) votes for each Class B Lot owned by them.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur.

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, however, that all Lots owned by the Declarant and the builder(s) shall revert to Class B Lots and thereby be reinstated with all rights, privileges and responsibilities of such Class if, after the conversion of Class B Lots to Class A Lots, additional Lots within the Properties are formed by the recording in the Wake County Registry of a new map of Lots as set forth in Article II hereof, thus making Declarant and the builder(s) the Owners, by virtue of the newly-recorded Lots and of other Lots owned by Declarant and the builder(s), of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or

(2) on December 31, 2007.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant and builder(s) shall have the same voting rights as other Owners of Class A Lots; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

ARTICLE IV

PROPERTY RIGHTS

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

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

(b) the right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate, sell or transfer all or any part of the Association Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association, without the consent of the Members, from granting easements upon, over, under and across the Association Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Subject to the provisions of subparagraph (e) below, the Association Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation organized for similar purposes.

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

(e) the right of the Association, with the consent of the Town of Cary, Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Association Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

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

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

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

All rights conferred by this section are subject to the right of the Association to make suspensions in accordance with Article IV, Sec. 1(b).

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its

successors and assigns, that it will convey fee simple title to the Common Area within each phase or section of the Subdivision to the Association, or Subassociation, as is appropriate, prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area until December 31, 2007 for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association or Subassociation shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Association Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Association Common Area Easements.

Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which an Association Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Association as provided in Article VIII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

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

(b) **Rights and Responsibilities of the Association as to the Association Common Area.** The Association shall have the right and obligation to ensure that the Association Common Area is preserved to the perpetual benefit of the Owners within the Property and, to that end, shall: (i) Maintain the Association Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the owner within the Property; (ii) procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Association Common Area easement lies, resulting from use of the Association Common Area; and (iii) pay all property taxes and other assessments levied against all Association Common Area owned in fee by the Association.

(c) **Association's Right of Entry.** The Association and the employees, agents, contractors and subcontractors, shall have a non-exclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as an Association Common Area easement for the purposes of: (i) installing and maintaining entrance signage and other signage, (ii) making such improvements to the Association Common Area easement as have been approved by the Association, and if required, by the Town of Cary; and (iii) maintaining the Association Common Area easement

in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use.

Section 5. Regulation and Maintenance of a Pond or Lake. A portion of the Association Common Area may contain a pond or lake, which would be owned and maintained by the Association as Association Common Area in accordance with the rules or regulations of the appropriate governmental entities. The Association shall have the right to make, publish and amend rules and regulations pertaining to the use of any such lake or pond, including the fees, if any, to be charged in connection therewith, and the penalties, if any, for violation of such rules and regulations. Any such rules and regulations shall be deemed a part of this Declaration and the Restrictive Covenants governing the Properties and may be enforced as provided in Article X hereof. This shall not be construed as an obligation on the part of the Association to provide a pond or lake if one does not exist upon the conveyance of the Association Common Area to the Association, nor shall this provision preclude the Association from having said pond or lake filled in should it deem doing so in the best interest of the Subdivision and is in keeping with any governmental or jurisdictional regulation. If any part of the pond or lake encroaches into the Subassociation Common Area the waters thereto shall be deemed to be owned by the Association and there shall be an easement reserved to the Association and all Owners for access thereto, and to the Association for maintenance or filling in said area. If any part of the pond or lake encroaches into any Lot the waters thereto shall be deemed to be owned by the Association and there shall be an easement reserved to the Association for maintenance or filling in said area.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns 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 annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purposes of Assessments. 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: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Association Common Area, (ii) repair

and reconstruction of improvements on the Association Common Area, including storm water infiltration devices and other storm water retention, detention and drainage facilities constructed on or serving the Properties, including but not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Association Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance in accordance with the Section 4(b) of Article IV and Section 8 of Article X of the Declaration; (v) employment of attorneys, accountants, managing agencies, and other persons or firms to represent the Association when necessary; (vi) payment of the principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1, 2002, the maximum annual assessment shall be \$420.00 per Class A Lot per year and, subject to the provisions of Sections 3(c) and 3(d), below, \$105.00 per year per Class B Lot.

(a) From and after January 1, 2002, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by each class of Members, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero); provided however, that, except as otherwise provided in this Declaration, the assessment established for each Class B Lot shall always be one-fourth (1/4) of the assessment for a Class A Lot.

A Class B Lot (i.e., a Lot owned by the Declarant or a Builder who purchased such Lot from the Declarant) shall be assessed at the Class B rate until a dwelling constructed thereon is occupied as a residence pursuant to a certificate of occupancy issued by the appropriate governmental agency; thereafter it shall be assessed at the Class A rate. Such Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant or such Builder. It is the intent of the foregoing that a Lot containing a dwelling owned by the Declarant or a Builder and used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant or a Builder if it is occupied as a residence.

In the event that Class B Lots are converted to Class A Lots, or Class A Lots are reconverted to a Class B Lots, the assessment with respect to such Lots shall be prorated and charged according to their class as of the date of each conversion and reconversion.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement for which the Association is responsible, including, if appropriate, fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Members and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

*** Section 5. Assessment Rate; Collection Period.** Annual and special assessments shall be fixed at a uniform rate for all Lots within each Class (each Class being subject to a different level of assessment pursuant to Section 3 of this Article) and may be collected on a yearly, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice and Quorum for any Action Authorized Under Section 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 V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the recording of the plat of that phase. Unless a lower amount is set by the Board of Directors, the first annual assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least twenty-five (25) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

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

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charges as the Board of Directors may from time to time establish, and if not paid within thirty (30) days after the due date, shall also bear

interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. Additionally, any Judgment for the Association may accrue interest at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Association Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure of a mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or for the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a public authority and all property 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. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such dwelling and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 12. Individual Expense Assessments. Individual Expense Assessments include any amount levied against any Owner occasioned by such Owner's or any such Owner's family members, guests, invitees or lessees and their family members, guests and invitees use, maintenance or treatment of the Association Common Area or Lots or such person's non-compliance with the provisions of this Declaration, the Bylaws of the Association, or any other governing documents applicable to the Association including, but not limited to, non-compliance of dwellings and any other Improvements or personal property contained therein with the standards set forth in this Declaration or as adopted from time to time by the Association, which causes the Association or Declarant to incur additional costs and expenses which would not have been incurred if the Owner or the Owner's family members, guests, invitees or lessees and their family members, guests and invitees had been in compliance with the foregoing ("Noncompliance".) The amount of the Individual Expense Assessment(s) shall be equal to any such additional costs incurred, plus the amount of any fine or

penalty imposed upon the Owner in Noncompliance by the Association for the Noncompliance. The Individual Expense Assessment and any late charges relating thereto shall be assessed against the Owner(s) in Noncompliance and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

Individual Expense Assessments shall be enforceable in the same manner as special assessments imposed pursuant to the terms of this Article V, except that (i) Individual Expense Assessments may be charged by affirmative vote of two-thirds (2/3) of the Board of Directors; (ii) a vote of the Members shall not be required to charge an Individual Expense Assessment; and (iii) an Individual Expense Assessment shall be due and paid on or before a date determined by affirmative vote of two-thirds (2/3) of the Board of Directors, which date shall not be less than six (6) months nor more than twelve (12) months from the date that the Association gives the Owner a written statement itemizing the sum due under the Individual Expense Assessment and stating the due date for payment of such assessment. Notwithstanding anything to the contrary contained herein, it is recognized and declared that the Individual Expense Assessments shall be in addition to and not part of any other assessment; any Individual Expense Assessment against an Owner shall be paid by such Owner in addition to any other assessment.

ARTICLE VI

RIGHTS OF LENDERS

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

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

- (a) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;
- (b) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or
- (c) any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

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

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or

transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Association, with the consent of the Town of Cary, from exchanging Association Common Area for other property as provided in Section 1(e) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

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

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

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

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

ARTICLE VII

EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve or grant easements over the Association Common Area as provided in Article IV, Section 1(c), of the Declaration. Within any such easement herein provided, no structure, trees or shrubs, or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct

drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Development Easement and Right of Entry. The Declarant and Declarant's respective employees, agents, contractors, subcontractors and invitees shall have a perpetual access easement over the Association Common Area, the Subassociation Common Area, and every Lot within the Properties to the extent reasonably necessary to install, construct, reconstruct, remove and maintain streets, utilities and other improvements in connection with the general plan of development for the Property. Declarant and the Association, and their respective employees, agents, contractors, subcontractors and invitees, shall have an easement for the installation, maintenance, repair and replacement of any and every monument, sign, landscaping, lighting, or other improvements installed or to be installed upon or within any landscape buffer area, entry area or other portion of the Association Common Area which may be located within the boundaries of a Lot. The Subassociation and its respective employees, agents, contractors, subcontractors and invitees, shall have an easement for the installation, maintenance, repair and replacement of any and every monument, sign, landscaping, lighting, or other improvements installed or to be installed upon or within any landscape buffer area, entry area or other portion of the Subassociation Common Area which may be located within the boundaries of the Association Common Area or within the boundaries of a Lot.

Section 3. Easements for Governmental Access. An easement is hereby established over the Common Area, private streets, and every Lot within the Properties for the benefit of applicable governmental agencies for: installing, removing and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 4. Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Easement for Initial Encroachments. If the event that any portion of a dwelling constructed on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any portion of any structure erected principally on the Common Area encroaches upon any lot, then an easement shall exist for the continuance of such encroachment upon such Lot for so long as such encroachment

shall naturally exist. The foregoing shall not be construed so as to allow enlargement of any existing encroachment. The Declarant reserves the right to allow further initial construction encroachment easements, including easements into private utility or drainage easements as may be necessary and do not interfere with the intended use of the easement reserved.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, re-roofing, wall or other structure shall be commenced, erected or maintained upon the Single-Family Subdivision, nor shall any exterior re-painting, or addition to or change or alteration therein be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping of any Lot be commenced or made (such construction, alteration, and landscaping are hereinafter referred to as the "Improvement") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Declarant shall have the right to charge a reasonable fee, not to exceed \$75.00, for receiving and processing each application. The Declarant shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. The Declarant shall not approve any improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of Development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII, as it applies to the Single-Family Subdivision to the Board of Directors of the Association, as it applies to the Townhome Subdivision to the Board of Directors of the Subassociation, or to any other person(s) or firm(s). Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment of Declarant's Rights. Declarant shall delegate such authority to the Association for those Lots within the Single-Family Subdivision (which may, in turn, delegate such authority to an Architectural Control Committee composed of three or more persons appointed by the Board of Directors of the Association), not later of the date upon which Declarant no longer owns any Lots within the Single-Family Subdivision, or December 31, 2007, whichever is earlier. Declarant shall delegate such authority to the Subassociation for those Lots within the Townhome Subdivision (which may, in turn, may delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board of Directors of the Subassociation) not later of the date upon which Declarant no longer owns any Lots within the Townhome Subdivision, as applicable, or December 31, 2007, whichever is earlier. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to any such assignee of Declarant's rights. Nothing herein shall be construed to permit interference with

the development of the Lots by Declarant in accordance with its general plan of development.

ARTICLE IX

USE RESTRICTIONS

Section 1. Prohibited Uses. No Lot or dwelling constructed thereon shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations.

Section 2. Prohibited Activities; Businesses. No noxious or offensive trade or activity shall be carried on or in any Lot or Dwelling, nor shall anything be done thereon or therein which may be or become an annoyance or nuisance to the neighborhood. No business, trade, professional or commercial activity, or any other non residential use shall be conducted on the Properties or within any Lot or Dwelling (except a model home or sales center maintained by Declarant or a builder) without the consent of the Board of Directors of the Association or Subassociation, as applicable, and approved by the Town of Cary.

Section 3. Minimum Dwelling Size. The minimum heated square footage of a dwelling within the Single-Family Subdivision may not be less than One Thousand Eight Hundred (1,800) square feet for a one-story dwelling, with not less than Nine Hundred (900) square feet on the first floor of a 2 story or 2 ½ story dwelling; and the minimum heated square footage for a dwelling within the Townhome Subdivision may not be less than One Thousand Two (1,200) square feet, with not less than Six Hundred (600) square feet on the first floor.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Signs. Except as otherwise required by the Town of Cary, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant or a builder to advertise Lots and/or Dwellings for sale during the construction and sales period, one sign of not more than six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before election and shall be removed within two (2) days after such election.

Section 6. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained 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. As provided in Section 13 of this Article IX, the Board of Directors of the Association shall have the right and authority to adopt rules and regulations which further limit or prohibit the types of animals or household pets which may be kept or maintained on a Lot or in a Dwelling within the Single-Family Subdivision and which limit or prohibit such animals upon Association Common Area, and the Board of Directors of the Subassociation shall have the right and authority to adopt rules and regulations which further limit or prohibit the types of animals or household pets which may be kept

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or maintained on a Lot or in a Dwelling within the Townhome Subdivision and which limit or prohibit such animals upon Subassociation Common Area.

Section 7. Antennae: Satellite Dishes. Except as stated below, no satellite receiver or disc and no radio or television transmission or reception towers or antennae shall be erected on a Lot unless approved as provided in Article VIII of this Declaration. Notwithstanding the above, a satellite dish or disc may be located on a Lot within the Single-Family Subdivision, provided that (i) the disc or dish is not more than two feet in diameter and (ii) the disc or dish is located or screened in such a way that it cannot be seen from any street within the Subdivision.

Section 8. Clotheslines. No clotheslines may be erected or maintained on any Lot.

Section 9. Garbage: Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the dwelling in such a manner as not to be visible from the street upon which the dwelling fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

★ **Section 10. Lease of Dwelling.** The Owner of a dwelling may lease or sublet the premises. However, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions and Restrictions for Upchurch Farms and Towns of Upchurch Farms recorded in the Wake County Registry and, if applicable, the Additional Declaration of Covenants, Conditions and Restrictions for Towns of Upchurch Farms. Tenant acknowledges that he/she/they has/have received a copy of such Declaration or Declarations and is/are familiar with the provisions of same"

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association or Subassociation, as applicable, a copy of any leases or subleases of his/her unit.

Section 11. Parking. No Owner or his family, lessee or sublessee of an Owner shall: (i) park any vehicle on the street within or adjoining the Properties except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Properties any abandoned, partly disabled or inoperative vehicle; (iii) park or keep on any Lot or any street within or adjoining the Properties any bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else, not otherwise allowed under this Section, other than normally intended to be a private passenger vehicle within the Property; or (iv) park or keep, anywhere other than in the enclosed garage, any boat or boat trailer, motor home, camper, or other recreational vehicle.

As to those lots within the Single-Family Subdivision and as to the Association Common Area, the Board of Directors of the Association shall have the right and authority to make, implement and

enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof and shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the owner of the Lot to which such vehicle is registered.

As to those lots within the Townhome Subdivision and as to the Subassociation Common Area, the Board of Directors of the Subassociation shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof and shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the owner of the Lot to which such vehicle is registered.

Section 12. Fines. The Board of Directors of the Association shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by its Board pursuant thereto as same pertains to the Single-Family Subdivision or Association Common Area. The Board of Directors of the Subassociation shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and the Additional Declaration of Covenants, Conditions and Restrictions Specific for Towns of Carriage Farms Subdivision and/or the rules and regulations hereafter promulgated by its Board pursuant thereto as same pertains to the Townhome Subdivision or Subassociation Common Area. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 13. Adoption of Rules. The Board of Directors of the Association shall have the authority to adopt additional rules and regulations governing the use of the Association Common Area and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot in the Subdivision at least fifteen (15) days before such rules and regulation become effective. The Board of Directors of the Association shall have the authority to adopt additional rules and regulations governing the use of the Lots within UPCHURCH FARMS SUBDIVISION and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot within the Single-Family Subdivision at least fifteen (15) days before such rules and regulations become effective. The Board of Directors of the Subassociation shall have the authority to adopt additional rules and regulations governing the use of the Subassociation Common Area and the Lots within the TOWNS OF UPCHURCH FARMS SUBDIVISION and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot within the Townhome Subdivision at least fifteen (15) days before such rules and regulations become effective.

Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by 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 an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than seventy-five (75 %) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty percent (50 %) of the Lots; provided, however, that the Board of Directors of the Association and the Board of Directors of the Subassociation may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article X, by the Federal Housing Administration or Veterans Administration, and is recorded in the Office of the Register of Deeds of Wake County. No amendment shall be effective unless it is first approved by the Town of Cary, if applicable.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then, as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"): annexation of additional property, mortgaging of Common Area, dedication, exchange, or otherwise deeding of Common Area to persons other than the Association or Subassociation, and amendment of this Declaration.

Section 5. Non-Liability of Governmental Entities. Neither the County of Wake, Town of Cary nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Properties of any Lot therein due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Builder, the Association, the Subassociation, an Owner, or an occupant of any Lot. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association to whom the private street has been conveyed until and unless such private streets are constructed to the minimum standards sufficient to allow their inclusion for public maintenance, and accepted by a proper governmental authority for said

maintenance.

Section 6. Subdivision of Lots. No Lot within the Property may be subdivided by sale or otherwise as to reduce the total lot area shown on the recorded plat of the Property, except by and with consent of the Declarant and, if required, by the Town of Cary. Declarant's consent shall not be required after December 31, 2007; thereafter consent shall be obtained from the Association or its Architectural Committee for Lots within the Single-Family Subdivision and from the Subassociation or its Architectural Committee for Lots within the Townhome Subdivision.

Section 7. Declarant's Right to Change Development. With the approval of the Town of Cary, and, if required, by FHA or VA, and subject to such terms and conditions as the Town of Cary may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from the Property.

Section 8. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain hazard insurance for real and personal property owned by the Association or for which the Association is otherwise responsible in an amount not less than 100% of the insurable value of said real and personal property, and shall procure and maintain officers' and directors' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of the Declaration.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal by its duly authorized representative, as of this the 12 day of SEPT, 2001.

TRITON UPCHURCH, LLC,
a North Carolina Limited Liability Company

By: Gy Fynn (SEAL)
MEMBER, Manager

STATE OF NC
COUNTY OF Durham

I, Teresa Emory, a Notary Public of the County and State aforesaid, certify that Greg Ferguson as Manager of TRITON UPCHURCH, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and behalf of TRITON UPCHURCH, LLC.

Witness my hand and official stamp or seal, this 12 day of September, 2001.

My commission expires:

9/26/2004

Teresa Emory
Notary Public

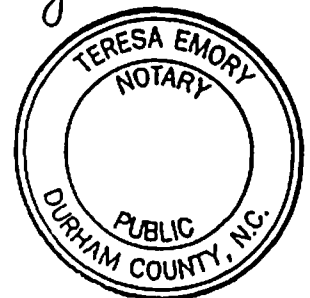


EXHIBIT A

Being that tract or tracts of land lying in White Oak Township, Wake County, North Carolina, and more particularly described as:

Tract 1:

Being all of that property shown on map(s) entitled "Plat of Subdivision of UPCHURCH FARMS, Tract 3, Phase 1, Section 1" recorded in Book of Maps 2001 at pages 1600 and 1601, Wake County Registry, to which map(s) reference is hereby made for a more particular description of same.

Tract 2:

Being all of that property shown on map(s) entitled "Plat of Subdivision of TOWNS OF UPCHURCH FARMS, Tract 4, Phase 1, Sect 1 & Sect 2" recorded in Book of Maps 2001 at pages 1596, 1597, 1598 and 1599, Wake County Registry, to which map(s) reference is hereby made for a more particular description of same.

EXHIBIT B

That certain tract or parcel of land adjoining the lands of R.B. Dawson on the South, the Holt and Wilkinson lands on the East, the Stone and Frank Mills land on the North and the Frank Mills and A.M. Upchurch lands on the West and more fully described and bounded by a line according to a survey made by C. W. Russum, Registered Land Surveyor in November, 1954, as follows:

BEGINNING at an iron stake and pointers, the southwest corner of the tract herein and hereby described, said stake being placed in the line of R.B. Dawson, runs thence South 88 deg. 00 min. East 1145 feet to a stake and pointers, corner with Dawson in R.J. Holt's line; runs thence North 4 deg. 45 min. East 1641.45 feet to a stake and pointers, corner with Holt in Wilkinson line; runs thence North 89 deg. 00 min. West 247 feet to an iron stake, corner with Wilkinson; runs thence North 6 deg. 00 min. East 1069.5 feet crossing the road to an iron stake and pointers, corner with Wilkinson; thence South 86 deg. 30 min. East 247 feet to a stake with pointers, corner with Wilkinson; runs thence North 6 deg. 00 min. East 740 feet to a stake and pointers, corner with Wilkinson in Stone's line; runs thence North 86 deg. 30 min. West 1223.5 feet crossing Carpenter Road to an iron stake, corner in Mills property; thence South 5 deg. 40 min. West 764 feet to a stake, corner with A.M. Upchurch and Mills property in the Apex-Cary Road and in branch in small drain; thence along the said branch the following courses and distances, the branch as shown on said map being a line South 11 deg. 00 min West 620 feet, South 14 deg. 30 min. West 1400 feet; South 22 deg. 00 min. East 558 feet, South 13 deg. 30 min. East 167 feet to the point and place of Beginning, containing according to said survey 101.2 acres. It is the same property devised to Baxter Upchurch, Durward Upchurch, Auba Upchurch and Elder Upchurch, by their father, the late A.M. Upchurch by his Will now recorded in the Office of the Clerk of the Superior Court for Wake County in Book of Wills "U" at Page 243. (This being all of the land described in the Deed recorded in Book 8771 at page 424, corrected in Book 8902 at page 2610 and in that Memorandum of Option recorded in Book 8771 at page 458, Wake County Registry)

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 009076 Page : 02365 - 02394

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Please retain with original document and submit for rerecording.**



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

North Carolina - Wake County

The foregoing certificate _____ of _____

Teresa Emory

Prepared by and mail after recording to
(or hold for)

Moore & Alphin, PLLC
1426 E. NC Hwy 54, Suite B
Durham, NC 27713

Wake County, NC 1009
Laura M Riddick, Register Of Deeds
Presented & Recorded 09/14/2001 15:49:02
Book : 009078 Page : 02395 - 02425

ADDITIONAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
SPECIFIC FOR TOWNS OF UPCHURCH FARMS SUBDIVISION

CONTENTS

	Beginning Page No.
Preamble	<u>1</u>
Article I: Definitions	<u>2</u>
Section 1 - Association	
Section 2 - Subassociation	
Section 3 - Association Common Area	
Section 4 - Subassociation Common Area	
Section 5 - Common Area	
Section 6 - Declarant	
Section 7 - Lot	
Section 8 - Member	
Section 9 - Owner	
Section 10 - Properties	
Section 11 - Unit or Dwelling	
Section 12 - Builder	
Article II: Property Subject to this Declaration	<u>4</u>
Section 1 - Existing Property	
Section 2 - Annexation by the Declarant	
Section 3 - Annexation by the Members	
Section 4 - Conveyance of Subassociation Common Area in Annexed Areas	
Article III: Membership and Voting Rights	<u>6</u>
Section 1 - Membership	
Section 2 - Voting Rights	
Article IV: Property Rights	<u>7</u>
Section 1 - Owners' Easements of Enjoyment and Access	
Section 2 - Delegation of Use	
Section 3 - Conveyance of Title to the Subassociation	
Section 4 - Regulation and Maintenance of Subassociation Common Area	

Article V:	Covenant for Maintenance Assessments	<u>10</u>
Section 1 -	Creation of the Lien and Personal Obligation of Assessments	
Section 2 -	Purposes of Assessments	
Section 3 -	Maximum Annual Assessment	
Section 4 -	Special Assessments	
Section 5 -	Assessment Rate; Collection Period	
Section 6 -	Notice and Quorum for any Action Authorized Under Sections 3 and 4	
Section 7 -	Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment;	
Section 8 -	Effect of Nonpayment of Assessments; Remedies	
Section 9 -	Subordination of the Lien to Mortgages	
Section 10 -	Exempt Property	
Section 11 -	Working Capital Fund	
Section 12 -	Individual Expense Assessments	
Article VI:	Rights of Lenders	<u>14</u>
Section 1 -	Books and Records	
Section 2 -	Notice to Lenders	
Section 3 -	Approval of Owners and Holders of First Deeds of Trust	
Section 4 -	Payment of Taxes and Insurance Premiums	
Article VII:	Easements	<u>16</u>
Section 1 -	Access and Utility Easements	
Section 2 -	Development Easement and Right of Entry	
Section 3 -	Easements for Governmental Access	
Section 4 -	Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction	
Section 5 -	Subassociation's Easement and Right of Entry	
Section 6 -	Easement for Initial Encroachments	
Article VIII:	Architectural Control	<u>18</u>
Article IX:	Maintenance of Lots and Units	<u>19</u>
Section 1 -	Subassociation's Responsibility	
Section 2 -	Owner's Responsibility; Remedy for Owner's Failure to Maintain	
Section 3 -	Assessment of Cost	
Section 4 -	Access at Reasonable Hours	
Section 5 -	Party Walls	
Article X:	Use Restrictions	<u>21</u>

Article XI: General Provisions

- Section 1 - Enforcement
- Section 2 - Severability
- Section 3 - Amendment
- Section 4 - FHA/VA Approval
- Section 5 - Non-Liability of the Governmental Entities
- Section 6 - Subdivision of Lots
- Section 7 - Declarant's Right to Change Development
- Section 8 - Insurance
- Section 9- References to Association

**ADDITIONAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
SPECIFIC TO
TOWNS OF UPCHURCH FARMS SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **TRITON UPCHURCH, LLC**, a North Carolina Limited Liability Company, (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant has heretofore acquired certain real property located in Wake County, North Carolina, more fully described in the deed recorded in Book 8771, Page 424, and Deed of Correction recorded in Book 8902 at page 2610, Wake County Registry, and has an option to acquire certain real property located in Wake County, North Carolina, more particularly described in Memorandum of Option recorded in Book 8771 at page 458, Wake County Registry, which Declarant is currently developing into a residential community known as **UPCHURCH FARMS SUBDIVISION** (hereinafter sometimes referred to as "**UPCHURCH FARMS**" or the "Single-Family Subdivision") and **TOWNS OF UPCHURCH FARMS SUBDIVISION** (hereinafter referred to as "**TOWNS OF UPCHURCH FARMS**" or the "Townhome Subdivision"), hereinafter collectively referred to as the "Subdivision"; and

WHEREAS, said Single-Family Subdivision will consist of detached residential dwellings and said Townhome Subdivision will consist of multi-family townhomes; and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the common area and to enforce the covenants and restrictions applicable to the Subdivision, and, to that end, subjected all of the property within the Subdivision to a Declaration of Covenants, Conditions and Restrictions for Upchurch Farms Subdivision and Towns of Upchurch Farms Subdivision recorded in Book _____ at page _____, Wake County Registry (hereinafter referred to as the "Master Declaration"); and

WHEREAS, Declarant had deemed it advisable to create an organization or organizations to own, maintain and administer the common areas for Upchurch Farms Subdivision, to administer and enforce covenants and restrictions, and to collect and disburse the assessments and charges created in the aforesaid Master Declaration, and Declarant therefore incorporated under North Carolina law as a non-profit corporation, the **UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.**, (sometimes referred to herein as the "Association") for the purpose of exercising the aforesaid functions; and

WHEREAS, Declarant has deemed it advisable to create a separate organization to own, maintain, and administer the common areas specific only to the Towns of Upchurch

Farms Subdivision, to administer and enforce covenants and restrictions specific only to the Towns of Upchurch Farms Subdivision, and to collect and disburse the additional assessments and charges created herein, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC. (sometimes referred to herein as the "Subassociation") for that purpose;

WHEREAS, all property owners, regardless of whether owners of property located in Upchurch Farms Subdivision or Towns of Upchurch Farms Subdivision, benefit from the common areas of Upchurch Farms Subdivision and were subjected to the Master Declaration, however, only those owners of property located in Towns of Upchurch Farms will be subjected to this Additional Declaration of Covenants, Conditions and Restrictions Specific to Towns of Upchurch Farms Subdivision;

NOW, THEREFORE, Declarant declares that the real property described in Section 1 of Article II of this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Subassociation" shall mean and refer to the TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., A North Carolina non-profit corporation, its successors and assigns.

Section 3. "Association Common Area" shall mean and refer to any real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise for the common use and enjoyment by the Owners of Lots within the Properties as defined in that Declaration of Covenants, Conditions and Restrictions for Upchurch Farms Subdivision and Towns of Upchurch Farms Subdivision hereinabove referenced. The Association Common Areas to be owned by the Association shall be described in Deeds to the Association, and shall include without limitation, areas designated common areas, common properties, common elements area, open space, landscape easements, landscaped medians, sign easements, private streets, private parking areas, sewer and water

lines not located within any public easement or public street right of way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, stormwater retention or detention facilities and storm drainage pipes serving more than one lot and located outside any public street and not otherwise maintained by any governmental authority.

Section 4. "Subassociation Common Area" shall mean and refer to any real property, together with any improvements thereon, owned by the Subassociation, whether in fee, by easement or otherwise for the common use and enjoyment by the Owners of Lots within the Townhome Subdivision. The Subassociation Common Areas to be owned by the Subassociation shall be described in Deeds to the Subassociation, and shall include without limitation, areas designated common areas, common properties, common elements area, open space, landscape easements, landscaped medians, sign easements, private streets, private parking areas, sewer and water lines not located within any public easement or public street right of way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, stormwater retention or detention facilities and storm drainage pipes serving more than one lot and located outside any public street and not otherwise maintained by any governmental authority.

Section 5. "Common Area" shall mean and refer to all Association Common Area and Subassociation Common Area, jointly.

Section 6. "Declarant" shall mean and refer to TRITON UPCHURCH, LLC. It shall also mean and refer to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an Assignment of Declarant's Rights recorded in the Wake County Registry.

Section 7. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Subassociation Common Area owned in fee by the Subassociation, and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 8. "Member" shall mean and refer to every person or entity who or which holds membership in the Subassociation.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation. Any reference to an Owner in the masculine gender shall be deemed to include the feminine or neuter gender, and any reference to an Owner in the singular shall be deemed to include the plural, and vice versa.

Section 10. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant said Article II.

Section 11. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether as Owners or tenants or lessees of the Owner thereof.

Section 12. "Builder" shall mean Westminster Homes, Inc. or any other entity or person to whom an unimproved lot is sold or conveyed for the purpose of building a residential dwelling or unit.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.

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

Section 2. Annexation by the Declarant.

a. Annexation Without Consent of the Members. At any time prior to December 31, 2007, additional lands within the property described in Exhibit B to this Declaration (hereinafter the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the Property to be annexed, provided, however, that such property must be contiguous to property already subject to this Declaration and must be approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Any or all of the Exhibit B Property may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Subassociation.

b. Annexation With Consent of the Members. At any time that Declarant owns any land within the Properties, Declarant may, with the consent of the Members as set forth in this subparagraph, annex additional property not within the boundaries of the Exhibit B Property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the

Class A votes cast, in person or by proxy, at a duly-called meeting of the Members at which a quorum is present, which meeting shall have been conducted pursuant to a Notice of Meeting which shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of Annexation executed by the Declarant and the Subassociation extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Subassociation in substantially the following form:

CERTIFICATE OF THE TOWNS OF UPCHURCH FARMS HOMEOWNER'S
ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the TOWNS OF UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to vote on the proposed annexation into the Subassociation of the following property:

[Property Description as set forth in the Notice of Meeting]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of annexation;, and _____ votes were cast against annexation. Accordingly, the motion to annex the property described above was approved.

[President/Secretary]

Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Subassociation.

Section 3. Annexation by the Members. At any time after December 31, 2007, the Members may annex additional property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the Members of the Subassociation at a duly-called meeting of the

members, which meeting shall have been conducted pursuant to a Notice of Meeting which Notice shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of Annexation executed by the Subassociation extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Subassociation in form substantially similar to that set forth in Section 2.b of this Article II.

Any property annexed pursuant to this Section 3 may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Subassociation.

Section 4. Conveyance of Subassociation Common Area in Annexed Areas. All Subassociation Common Areas located in any annexed area shall be conveyed to the Subassociation prior to the sale of any lot within the annexed area. All Subassociation Common Areas shall be conveyed in the same manner and subject to the same exceptions as set forth in Article IV, Sec. 3 of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots within the Properties. There shall be two classes of Lots with respect to voting rights.

(a) Class A Lots. Class A Lots shall be all Lots within the Townhome Subdivision except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots within the Townhome

Subdivision owned by Declarant and by any Builder(s) who or which acquires such Lot(s) from the Declarant for the purpose of constructing a residence thereon and which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. Declarant and such Builder(s) shall be entitled to three (3) votes for each Class B Lot owned by them.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur.

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, however, that all Lots owned by the Declarant and the builder(s) shall revert to Class B Lots and thereby be reinstated with all rights, privileges and responsibilities of such Class if, after the conversion of Class B Lots to Class A Lots, additional Lots within the Properties are formed by the recording in the Wake County Registry of a new map of Lots as set forth in Article II hereof, thus making Declarant and the builder(s) the Owners, by virtue of the newly-recorded Lots and of other Lots owned by Declarant and the builder(s), of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or

(2) on December 31, 2007.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant and Builder(s) shall have the same voting rights as other Owners of Class A Lots; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

ARTICLE IV

PROPERTY RIGHTS

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

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

(b) the right of the Subassociation to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid, or for a period not

to exceed sixty (60) days for any infraction of the published rules and regulations of the Subassociation.

(c) the right of the Subassociation to dedicate, sell or transfer all or any part of the Subassociation Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Subassociation, without the consent of the Members, from granting easements upon, over, under and across the Subassociation Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Subject to the provisions of subparagraph (e) below, the Subassociation Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation organized for similar purposes.

(d) the right of the Subassociation to borrow money and, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Subassociation, with the consent of the Town of Cary, Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Subassociation Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

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

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

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

All rights conferred by this section are subject to the right of the Subassociation to make suspensions in accordance with Article IV, Sec. 1(b)."

Section 3. Conveyance of Title to the Subassociation. Declarant covenants, for itself, its successors and assigns, that it will convey fee simple title to the Subassociation Common Area within each phase or section of the Townhome Subdivision to the Subassociation prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area until December 31, 2007 for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Subassociation shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Subassociation Common Area by Declarant shall become the property of the Subassociation upon completion of such improvements.

Section 4. Regulation and Maintenance of Subassociation Common Area Easements. Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Subassociation, as is appropriate, an easement over and across that portion of any Lot on which a Subassociation Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Subassociation as provided in Article VIII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

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

(b) Rights and Responsibilities of the Subassociation as to the Subassociation Common Area. The Subassociation shall have the right and obligation to ensure that the Subassociation Common Area is preserved to the perpetual benefit of the Owners within the Properties and, to that end, shall: (i) Maintain the Subassociation Common Area in its natural

or improved state, as appropriate, and keep it free of impediments to its free use by the owner within the Properties; (ii) procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, covering the Subassociation and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Subassociation Common Area easement lies, resulting from use of the Subassociation Common Area; and (iii) pay all property taxes and other assessments levied against all Subassociation Common Area owned in fee by the Subassociation.

(c) Subassociation's Right of Entry. The Subassociation and the employees, agents, contractors and subcontractors, shall have a non-exclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Subassociation Common Area easement for the purposes of: (i) installing and maintaining entrance signage and other signage, (ii) making such improvements to the Subassociation Common Area easement as have been approved by the Subassociation, and if required, by the Town of Cary; and (iii) maintaining the Subassociation Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns 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 (in addition to those assessments created under the Master Declaration to be paid to the Association) to the Subassociation annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purposes of Assessments. The assessments levied by the Subassociation shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and

maintenance of properties, services and facilities related to the use and enjoyment of the Subassociation Common Area, (ii) repair and reconstruction of improvements on the Subassociation Common Area, including storm water infiltration devices and other storm water retention, detention and drainage facilities constructed on or serving the Properties, including but not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Subassociation Common Area owned by the Subassociation in fee; (iv) procurement and maintenance of insurance in accordance with the Section 4(b) of Article IV and Section 8 of Article XI of the Declaration; (v) employment of attorneys, accountants, managing agencies, and other persons or firms to represent the Subassociation when necessary; (vi) payment of the principal and interest on funds borrowed for Subassociation purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1, 2002, the maximum annual assessment (in addition to any assessment created under the Master Declaration to be paid to the Association) shall be \$1,104.00 per Class A Lot per year (\$92.00 per month) and, subject to the provisions of Sections 3(c) and 3(d), below, \$276.00 per year per Class B Lot (\$23.00 per month).

(a) From and after January 1, 2002, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by each class of Members, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero); provided however, that, except as otherwise provided in this Declaration, the assessment established for each Class B Lot shall always be one-fourth (1/4) of the assessment for a Class A Lot.

A Class B Lot (i.e., a Lot owned by the Declarant or a Builder who purchased such Lot from the Declarant) shall be assessed at the Class B rate until a dwelling constructed thereon is occupied as a residence pursuant to a certificate of occupancy issued by the appropriate governmental agency; thereafter it shall be assessed at the Class A rate. Such Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant or such Builder. It is the intent of the foregoing that a Lot containing a dwelling owned by the Declarant or a Builder and used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant or a Builder if it is occupied as a residence.

In the event that Class B Lots are converted to Class A Lots, or Class A Lots are reconverted to a Class B Lots, the assessment with respect to such Lots shall be prorated and charged according to their class as of the date of each conversion and reconversion.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Subassociation may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement for which the Subassociation is responsible, including, if appropriate, fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Members and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Assessment Rate; Collection Period. Annual and special assessments shall be fixed at a uniform rate for all Lots within each Class (each Class being subject to a different level of assessment pursuant to Section 3 of this Article) and may be collected on a yearly, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice and Quorum for any Action Authorized Under Section 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 V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the recording of the plat of that phase. Unless a lower amount is set by the Board of Directors, the first annual assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least twenty-five (25) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days

To: John
295-0182

before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

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

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charges as the Board of Directors may from time to time establish, and if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. The Subassociation may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. Additionally, any Judgment for the Subassociation may accrue interest at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Subassociation Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure of a mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or for the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a public authority and all property 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. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such dwelling and transferred to the Subassociation as part of its working capital. The purpose of the working capital fund is to ensure that the Subassociation will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the

Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 12. Individual Expense Assessments. Individual Expense Assessments include any amount levied against any Owner occasioned by such Owner's or any such Owner's family members, guests, invitees or lessees and their family members, guests and invitees use, maintenance or treatment of the Subassociation Common Area or Lots or such person's non-compliance with the provisions of this Declaration, the Bylaws of the Subassociation, or any other governing documents applicable to the Subassociation including, but not limited to, non-compliance of dwellings and any other Improvements or personal property contained therein with the standards set forth in this Declaration or as adopted from time to time by the Subassociation, which causes the Subassociation or Declarant to incur additional costs and expenses which would not have been incurred if the Owner or the Owner's family members, guests, invitees or lessees and their family members, guests and invitees had been in compliance with the foregoing ("Noncompliance".) The amount of the Individual Expense Assessment(s) shall be equal to any such additional costs incurred, plus the amount of any fine or penalty imposed upon the Owner in Noncompliance by the Subassociation for the Noncompliance. The Individual Expense Assessment and any late charges relating thereto shall be assessed against the Owner(s) in Noncompliance and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

Individual Expense Assessments shall be enforceable in the same manner as special assessments imposed pursuant to the terms of this Article V, except that (i) Individual Expense Assessments may be charged by affirmative vote of two-thirds (2/3) of the Board of Directors; (ii) a vote of the Members shall not be required to charge an Individual Expense Assessment; and (iii) an Individual Expense Assessment shall be due and paid on or before a date determined by affirmative vote of two-thirds (2/3) of the Board of Directors, which date shall not be less than six (6) months nor more than twelve (12) months from the date that the Subassociation gives the Owner a written statement itemizing the sum due under the Individual Expense Assessment and stating the due date for payment of such assessment. Notwithstanding anything to the contrary contained herein, it is recognized and declared that the Individual Expense Assessments shall be in addition to and not part of any other assessment; any Individual Expense Assessment against an Owner shall be paid by such Owner in addition to any other assessment.

ARTICLE VI

RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, By-laws, and the books and records of the

Subassociation and, upon written request to the Subassociation, to receive a copy of the financial statement for the immediately preceding fiscal year.

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

- (a) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;
- (b) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Subassociation; and/or
- (c) any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

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

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Subassociation. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Subassociation, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Subassociation, with the consent of the Town of Cary, from exchanging Subassociation Common Area for other property as provided in Section 1(e) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

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

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

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

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

ARTICLE VII

EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and other public utility installations are reserved as shown on the recorded plats of the Properties. The Subassociation may reserve or grant easements over the Subassociation Common Area as provided in Article IV, Section 1(c), of the Declaration. Within any such easement herein provided, no structure, trees or shrubs, or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

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

Section 2. Development Easement and Right of Entry. The Declarant and Declarant's respective employees, agents, contractors, subcontractors and invitees shall have a perpetual access easement over the Subassociation Common Area and every Lot within the Properties to the extent reasonably necessary to install, construct, reconstruct, remove and maintain streets, utilities and other improvements in connection with the general plan of development for the Property. Declarant and the Subassociation, and their respective employees, agents, contractors, subcontractors and invitees, shall have an easement for the installation, maintenance, repair and replacement of any and every monument, sign,

landscaping, lighting, or other improvements installed or to be installed upon or within any landscape buffer area, entry area or other portion of the Subassociation Common Area which may be located within the boundaries of a Lot. The Association and its respective employees, agents, contractors, subcontractors and invitees, shall have an easement for the installation, maintenance, repair and replacement of any and every monument, sign, landscaping, lighting, or other improvements installed or to be installed upon or within any landscape buffer area, entry area or other portion of the Association Common Area which may be located within the boundaries of the Subassociation Common Area or within the boundaries of a Lot.

Section 3. Easements for Governmental Access. An easement is hereby established over the Subassociation Common Area, private streets, and every Lot within the Properties for the benefit of applicable governmental agencies for: installing, removing and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 4. Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Subassociation's Easement and Right of Entry. The Subassociation, for itself and its employees, agents, contractors, subcontractors, and invitees, shall have a perpetual access easement over each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Subassociation as provided in Article IX of this Declaration.

Section 6. Easement for Initial Encroachments. If the event that any portion of a dwelling constructed on a Lot encroaches upon any other Lot or the Subassociation Common Area, and such encroachment was not caused by the purposeful act of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Subassociation Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any portion of any structure erected principally on the Subassociation Common Area encroaches upon any lot, then an easement shall exist for the continuance of such encroachment upon such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow enlargement of any existing encroachment. The Declarant reserves the right to allow further initial construction encroachment easements, including easements into private utility or drainage easements as may be necessary and do not interfere with the intended use of the easement reserved.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, re-roofing, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior re-painting, or addition to or change or alteration therein be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or relandscaping of any Lot be commenced or made (such construction, alteration, and landscaping are hereinafter referred to as the "Improvement") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Declarant shall have the right to charge a reasonable fee, not to exceed \$75.00, for receiving and processing each application. The Declarant shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. The Declarant shall not approve any improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of Development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Subassociation or to any other person(s) or firm(s). Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment of Declarant's Rights. Declarant shall delegate such authority to the Subassociation (which may, in turn, delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board of Directors of the Subassociation), not later of the date upon which Declarant no longer owns any Lots within the Properties or December 31, 2007, whichever is earlier. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to any such assignee of Declarant's rights. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

ARTICLE IX

MAINTENANCE OF LOTS AND UNITS

Section 1. Subassociation's Responsibility - Exterior Maintenance. In addition to

maintenance of the Subassociation Common Area and the improvements and facilities located thereon, the Subassociation shall provide exterior maintenance upon each dwelling on each Lot which is subject to assessments hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces. Such exterior maintenance shall not include glass surfaces or subsurface leakage into basement areas or crawlspace. Further, the Subassociation shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, Subassociation or the Builder who constructed the initial improvements on such Lot(s), and any Yard Improvements installed by an Owner with the prior written consent of the Subassociation (but only to the extent that such consent specifically provides that the Subassociation will maintain such added landscaping), provided however, that: (i) the Subassociation shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence installed; (ii) the Subassociation's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Subassociation shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity.

The Subassociation shall have no responsibility for insuring any Unit or other improvements on any Lot, and shall not be liable for any damage to any Unit, except such damage caused by the Subassociation, its duly authorized agents or employees.

The Subassociation shall have the right (but not the obligation), by the affirmative vote of a majority of the Members of each Class, to accept certain items, areas or improvements on a Lot for maintenance by the Subassociation, including, but not limited to, Yard Improvements installed by an Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Lot, as the Subassociation might establish in such written acceptance.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain.

Any maintenance on a Lot that is not the responsibility of the Subassociation, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair. If an Owner does not perform exterior maintenance of his Lot and Unit not otherwise the responsibility of the Subassociation, the Subassociation shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, to enter upon such Lot and to repair, maintain, and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance plus a surcharge of 15% for administration shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Subassociation shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than

thirty (30) calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Subassociation will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article IX.

Section 3. Assessment of Cost. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, flood, or other natural disaster, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles and 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 under Article V hereof, enforceable under the terms thereof; or in the event that the Subassociation performs maintenance on any Lot as provided in Section 2 of this Article IX, the cost of any such maintenance, replacement or repairs shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 4. Access at Reasonable Hours. In order to enable the Subassociation to accomplish the foregoing there is hereby reserved to the Subassociation the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. The Subassociation, through its duly authorized agents or employees, as provided in Section 4 of Article VII of this Declaration, shall have the right, after reasonable oral or written notice to the Owner, to enter upon any Lot at reasonable hours on any day.

Section 5. Party Walls. Each wall which is built as a part of the original construction of the townhomes upon the property and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

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 contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provisions of this Section, 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.

The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors in title.

Every owner shall have an easement and right of entry upon the lot of any other owner to the extent reasonably necessary to perform repairs, maintenance, or reconstruction of a party wall. Such repair, maintenance or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot or lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

If any owner desires to sell refinance, or otherwise obtain a loan on his Lot, he may, in order to assure a prospective purchaser or Lender that no adjoining owner has a right of contribution as provided in this Section request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without damage. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

In the event of any dispute arising concerning a party wall, or under the provisions of this Section, such dispute shall be settled by arbitration as provided under the laws of the state of North Carolina as they now are or are hereafter amended.

ARTICLE X

USE RESTRICTIONS

Section 1. Use Restrictions. The Properties shall be subject to the Use Restrictions as set forth in the Master Declaration hereinabove referenced as same apply to the Townhome Subdivision.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Subassociation or any Owner shall have the right to enforce, by 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 Subassociation or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than seventy-five (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty percent (50%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article XI, by the Federal Housing Administration or Veterans Administration, and is recorded in the Office of the Register of Deeds of Wake County. No amendment shall be effective unless it is first approved by the Town of Cary, if applicable.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then, as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"): annexation of additional property, mortgaging of Subassociation Common Area, dedication, exchange, or otherwise deeding of Subassociation Common Area to persons other than the Subassociation, and amendment of this Declaration.

Section 5. Non-Liability of Governmental Entities. Neither the County of Wake, Town of Cary nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Properties of any Lot therein due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Subassociation, Builder, an Owner, or an occupant of any Lot. In no case shall the Town or the State be responsible for maintaining any private street. Such responsibility shall rest with the Subassociation until and unless such private streets are constructed to the minimum standards sufficient to allow their inclusion for public maintenance, and accepted by a proper governmental authority for said maintenance.

Section 6. Subdivision of Lots. No Lot within the Property may be subdivided by sale or otherwise as to reduce the total lot area shown on the recorded plat of the Property, except by and with consent of the Declarant and, if required, by the Town of Cary. Declarant's consent shall not be required after December 31, 2007; thereafter consent shall be obtained from the Subassociation or its Architectural Committee.

Section 7. **Declarant's Right to Change Development.** With the approval of the Town of Cary, and, if required, by FHA or VA, and subject to such terms and conditions as the Town of Cary may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Subassociation Common Area, change unit types and reallocate units within, and withdraw real property from the Property.

Section 8. **Insurance.** The Subassociation shall procure and maintain adequate liability insurance covering the Subassociation, in an amount not less than \$1,000,000.00. The Subassociation shall also procure and maintain hazard insurance for real and personal property owned by the Subassociation or for which the Subassociation is otherwise responsible in an amount not less than 100% of the insurable value of said real and personal property, and shall procure and maintain officers' and directors' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of the Declaration.

Section 9. **References to Association.** Any reference to the Subassociation as the Association in this Declaration, the Articles of Incorporation or the Bylaws of the Subassociation where the meaning is clearly applicable to the Towns of Upchurch Farms Homeowner's Association, Inc. shall be deemed to mean the Subassociation.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal by its duly authorized representative, as of this the 12 day of SEPT, 2001.

TRITON UPCHURCH, LLC,
a North Carolina Limited Liability Company

By: Greg Ferguson (SEAL)
MEMBER, Manager

STATE OF NC
COUNTY OF Durham

I, Teresa Emory, a Notary Public of the County and State aforesaid, certify that Greg Ferguson as Manager of TRITON UPCHURCH, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and behalf of TRITON UPCHURCH, LLC.

Witness my hand and official stamp or seal, this 12 day of September, 2001.

My commission expires:

9/26/2004

Teresa Emory
Notary Public

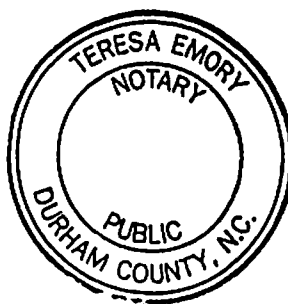


EXHIBIT A

Being that tract or tracts of land lying in White Oak Township, Wake County, North Carolina, and more particularly described as:

Being all of that property shown on map(s) entitled "Plat of Subdivision of TOWNS OF UPCHURCH FARMS, Tract 4, Phase 1, Sect 1 & Sect 2" recorded in Book of Maps 2001 at pages 1596, 1597, 1598 and 1599, Wake County Registry, to which map(s) reference is hereby made for a more particular description of same.