

Prepared and return to Greg L. Hinshaw, P. O. Box 10867, Raleigh, NC 27605

WAKE COUNTY AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE
VILLAGES OF FOX RUN (Recorded in Book 008869, Page 1665)
NORTH CAROLINA

THIS AMENDED AND RESTATED DECLARATION, made on the date hereinafter set forth by **Ballance Currin Properties LLC**, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant", and consented to by other owners as shown on the Consent of Owners attached hereto.

WHEREAS, Declarant has previously executed and recorded the Declaration, the same having been recorded in Book **008869**, Page **01665**, **Wake County Registry**; and,

WHEREAS, said Declaration provides in Article XIII that the Declarant may amend this Declaration upon approval by the Board of Directors of the Association and not less than 67% of the Owners;

AND WHEREAS, the City of Raleigh has required an amendment to this Declaration to add stormwater operation and maintenance of stormwater facilities to comply with Part 10, Chapter 9 of the Raleigh City Code;

NOW, THEREFORE, the Declarant does hereby amend and resubmit, publish and restate the Declaration as follows:

WHEREAS, Declarant is the owner of certain real property described hereinafter (the "Property") located in Wake County, North Carolina; and,

WHEREAS, the Property is a planned cluster unit development approved by the appropriate governmental authorities of the City of Raleigh, North Carolina, now known as The Villages of Fox Run; and,

WHEREAS, in accordance with such approved planned unit development, Declarant contemplates developing The Villages of Fox Run as a residential development; and,

WHEREAS, although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those contained herein) may be imposed in regard to the various subdivisions of the Property as described hereinafter, Declarant desires to impose pursuant hereto, easements, covenants, conditions and restrictions upon all of the Property, with the understanding that at the option of Declarant, certain thereof may be changed and additional and/or supplemental restrictions may be imposed in regard to the various subdivisions of the Property;

NOW THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes, Declarant hereby declares that all of the Property described hereinafter shall be held, sold and conveyed subject to the following easements, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Property and be binding on all

parties having any right, title or interest in the Property or any part thereof, their successors and assigns, and shall inure to the benefit Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "The Villages of Fox Run" when used herein shall refer to all of the Property.

Section 2. "Association" shall mean and refer to The Villages of Fox Run Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, and any other community or owners association within The Villages of Fox Run organized by the Declarant or by others with the consent of the Declarant.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any real property in The Villages of Fox Run which has been subjected to the provisions of this Declaration, including, but not limited to, owners of any portion of the Property but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Property" shall mean and refer to any tract of land or subdivision thereof in The Villages of Fox Run which has been subjected to the provisions of this Declaration or any Supplemental Declaration as may be referenced in deeds issued by the Declarant or any third party with the consent of the Declarant, including without limitation all that certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference.

Section 5. "Common Area" shall mean all real and personal property, including "Open Space" and "Limited Open Space" or "Limited Common Area", together with easement rights and dedicated portions of the Property, which may be deeded to or otherwise acquired by the Association for the common use and enjoyment of the Owners, including any recreational facility or area, stormwater impoundments and related facilities, landscaping, lakes, ponds, parks or trails.

Section 6. "Limited Common Area" shall mean all real property, including "Limited Open Space", which is labeled on any recorded map as "Undisturbed Natural Buffers", "Natural Vegetative State", or other unbuildable labels, upon which neither the Declarant nor any member shall make any improvements.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8 "Declarant" shall mean and refer to Ballance Currin Properties LLC, a North Carolina Limited Liability Company, its successors and assigns, and any agent or agents appointed by Ballance Currin Properties LLC, its successor and/or assigns, to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights herein reserved to said Declarant.

Section 9. "Development Plan" when used in this Declaration shall mean and refer to the plan for development contained in the site plan for The Villages of Fox Run submitted to and approved by the

City of Raleigh. Since the concepts of the future development of The Villages of Fox Run are subject to continuing revision and change by the Declarant, present and future references to the "Development Plan" shall be references to the Development Plan as it is supplemented from time to time by Approved Site Plans. All references to "Future Development" or "Future Townhouses" hereunder shall be as shown by the Development Plan as such may be modified by any plat recorded at the Wake County Registry.

Section 10. "Site Plans" as used herein shall mean and refer to site plans which plan for the development of a portion of the Property. "Approved Site Plans" as used herein shall mean and refer to a Site Plan which has been finally approved by both the City of Raleigh and the Architectural Review Committee as provided hereunder.

Section 11. "Open Space" shall mean and refer to all those parcels of real property within The Villages of Fox Run designated as "Open Space" in the Development Plan as the Development Plan may be modified and/or updated from time to time by various Site Plans as such Site Plans are approved by the City of Raleigh. "Open Space Preservation and Protection Areas" as used herein shall mean Open Space that may not be developed and is restricted. Open Space and Restriction Areas may not be disturbed without obtaining a written watercourse buffer permit from the City of Raleigh.

Section 12. "Single Family Lots" as usual used herein shall mean and refer to all those portions of the Property intended for subdivision or subdivided into lots included intended for the construction of detached dwelling units.

Section 13. "Townhome Lots" as used herein shall mean and refer to all those portions of the Property intended for subdivision or subdivided into lots intended for the construction of attached dwelling units.

Section 14. "Escrow Agreement" as used herein shall mean the escrow agreement required by the **Raleigh City Code Section 10-9027(c)**.

Section 15. "Escrow Fund" as used herein shall mean the monies paid into an escrow account pursuant to the Escrow Agreement.

ARTICLE II

PROPERTY

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Subdivisions. Additional restrictions may be imposed upon a Subdivision (or portion thereof) by the filing of record a supplemental declaration ("Supplemental Declaration") which has been executed by the Declarant and the Owner(s) of property within the Subdivision (or portion thereof) to which the restrictions are applicable. The Supplemental Declaration shall include such specific additional

controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in the Supplemental Declaration, which such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens shall encumber any such portion of the Property as are set forth and described in each respective Supplemental Declaration; provided, however, that such additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be contained in each such Supplemental Declaration shall be in addition to and not in lieu of the restrictions contained herein and, in the event of a conflict between a Supplemental Declarant and this Declaration, the more restrictive of the two shall control.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. The Declarant shall be a Member of the Association, and a creditor who acquires title to any portion of the Property pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a Member of the Association. Every Owner shall be a Member of the Association

Section 2. Voting Rights. The Association shall have three (3) classes of membership:

Class A. Class A Members shall be all Owners of Single Family Lots. Class A Members shall be entitled to one (1) vote for each Single Family Lot owned.

Class B. Class B Members shall be the Owners of Townhouse Lots. Class B Members shall be entitled to one (1) vote for each Townhouse Lot owned.

Class C. The Class C Member(s) shall be the Declarant and its successors and/or assigns. Class C Members shall be entitled to three (3) votes for each Townhome Lot or Single Family Lot owned;

provided, however that the Class C membership shall terminate and be converted to Class A membership for a Single Family Lot or Class B membership for a Townhome Lot, whichever applies to the particular Class of Lots, upon the earlier of:

(i) the date the total votes outstanding in the Class A and Class B memberships equal the total votes outstanding in the Class C membership; provided that the Class C membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class C membership to Class A or B membership, additional lands are annexed to the Property by the Declarant as provided in Article XIII of this Declaration; or

(ii) December 31, 2008 and after that date there shall be no Class C Members.”

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3) members until December 31, 2008 and seven (7) members thereafter. The term of such Directors is to be determined in accordance with the provisions of the Articles of Incorporation of the Association. There shall be two (2) classes of Directors: Class I Directors shall be elected by the Class A and Class B Members, and Class II Directors shall be elected by the Class C Members. The Class I

Directors shall consist of three (3) Class A Members, three (3) Class B Members, and one (1) "at large" Member. All of the Directors shall be Class II Directors until December 31, 2008. After December 31, 2008, all of the Directors shall be Class I Directors. If at any time following December 31, 2008 there are no members of any respective Class, a Member of which is to serve as a Class I Director, then the number of Class I Directors shall be reduced by the number of such memberless classes until such time as such class(es) has/have member(s). At such time, the number of Class I Directors shall be increased to provide for the fact that the class then has membership and the member of said class shall become the Class I Director for that respective class (the "Replacement Director"); or if there should be more than one (1) such member. then those members shall elect an individual to serve as the Replacement Director. In either case, the Replacement Director shall serve until the next election of Directors.

Section 4. Election of the Board of Directors. Each Member shall be entitled to as many votes as equals the total number of votes he is entitled to based on his Ownership of or Tenancy in one (1) or more of the various classifications of property as computed by the formula set out herein above. Each Member may cast the total number of votes to which he is entitled for each vacancy to be filled by a Class I or Class II Director. Cumulative voting shall not be allowed.

Section 5. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the members at an open meeting of the Association shall be as follows:

(a) The first time a meeting of the Members of the Association is called to vote on (i) an increase in the Maximum Regular Annual Assessment as provided herein, (ii) a Special Assessment, (iii) the gift or sale of any Common Area, (iv) an Amendment to this Declaration, or (v) the termination of this Declaration, the presence of Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership required for such action shall constitute a quorum.

(b) The first time a meeting of the Members of the Association is called to vote on any other action, the presence at the meeting of Members or proxies entitled to cast thirty percent (30%) of the total vote of the Membership required for such action shall constitute a quorum.

If the required quorum is not present at any meeting described above, with the exception of any meeting called to vote on the termination of this Declaration another meeting or meetings may be called subject to the giving or proper notice, and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this section of this Article and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given when given each Member not less than fifteen (15) days nor more than sixty (60) days prior to the date of the meeting at which any proposed action is to be considered.

Section 6. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

Section 7. Ballots by Mail. When required by the Board of Directors, there shall be sent with

notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out above. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

Section 8. Board of Directors Vote. Upon election hereunder, each Director shall have the same vote as any other Director.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, hereby covenants, and each Owner of any portion of the Property (other than the Association) 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, in addition to any assessments required under a Supplemental Declaration, the following: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of Open Space and Common Areas (including without limitation stormwater facilities, lakes, private drives or streets, recreation facilities), for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, payment of insurance premiums for contracts of hazard and liability insurance on the Common Area and on other portions of the Property and payment of local ad valorem taxes or governmental charges, if any, on the Common Area and maintenance of landscaped areas within the Property which are maintained by the Association. It shall be expressly understood that due to differences which may exist with respect to the plan of development for the various respective Subdivisions, there may be certain additional assessments which are unique to the respective Subdivisions, and if such exist, they shall be included in the assessments for the Properties located within the respective Subdivision and not within the assessments for Properties located created within the remainder of the Property and such assessments may be used by the Association for such purposes as may be set out in the Supplemental Declaration creating such assessments.

In addition, the assessments shall be used for payment into the required stormwater Escrow Fund pursuant to the Escrow Agreement to pay the cost of maintaining stormwater and drainage easements and stormwater facilities, including stormwater detention basins and devices, as well as grassed swales, all serving more than one lot as shown on the recorded maps, pursuant to the Operations and Maintenance Manual for The Village of Fox Run Stormwater Detention Basins and Grassed Swales, prepared by

Spaulding & Norris, P.A., civil engineering and planning, dated October 16, 2001, a copy of which Manual shall be in possession of the Association, and is attached hereto as Exhibit C and incorporated herein by reference.”

Section 3. Maximum Annual Assessment. The Maximum Regular Annual Assessment, as set forth in the schedule herein below, and as is automatically increased annually pursuant to subparagraph (g) below, shall be levied by the Association and shall be in addition to Special Assessments and any assessments created by any Supplemental Declaration. If, however, the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Assessment less than the Maximum Regular Annual Assessment, it may levy such lesser Assessment; provided, however, so long as the Declarant is engaged in the development of properties which are subject to the terms of this Declaration, the Association may not reduce Assessments below those set out below without the written consent of the Declarant. The levy of an Assessment less than the Maximum Regular Annual Assessment in one (1) year shall not affect the Board's right to levy an Annual Assessment equal to the Maximum Regular Annual Assessment in subsequent years.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year, such Annual Assessment shall automatically be five percent (5%) greater than the Annual Assessment levied for the previous Assessment year; provided, however, that the Board of Directors may, by majority vote, levy a greater or lesser Assessment if it shall determine that the important and essential functions of the Association will be properly funded by such greater or lesser Assessment.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and, thereafter, during such Assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote, levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

(a) From and after February 1, 2001, the Maximum Regular Annual Assessment shall be the sums calculated in accordance with the following Assessment Schedule, as shall be automatically increased in each instance by an inflation adjuster as set forth herein, and as may be increased pursuant to the provisions set forth immediately above:

Property Type	Maximum Regular Annual Assessment
Single Family Lots	\$411.00 per Single Family Lot.
Townhome Lot	\$1071.00 per Townhome Lot

(b) Property shall not be classified for purposes of these Covenants and these Annual Assessments as a Single Family Lot or Townhome Lot until the first day of the month following the recording of a plat in the Office of the Register of Deeds of Wake County, North Carolina, showing such Single Family Lot and/or Townhome Lot.

(c) For purposes of these Covenants and these Annual Assessments, all properties which have not been subdivided into and classified as Single Family Lots or Townhome Lots shall be classified as

Unsubdivided Land and not subject to Assessments.

(d) Assessments shall be billed annually, quarterly, monthly or on such other basis as may be determined by the Board of Directors. The billing schedule shall be the same for all properties of a specified category; however, the Board of Directors, in its discretion, may establish different schedules for the billing of Assessments due from different categories of property. All Assessment bills shall be due and payable as determined by the Board of Directors; provided, however, that if the Board of Directors elects to utilize a Billing Agent, the Billing Agent shall set the date on which Assessment bills shall be due and payable. Further, the Board of Directors may authorize the billing of the Annual Assessment in different installment amounts throughout the year in order to provide adequate cash flow.

(e) The Board of Directors may authorize a billing agent (the "Billing Agent") to collect the Assessments provided for herein.

(f) The Owner of any assessable property which changes from one category to another during an Assessment year shall be billed an additional amount for the remaining full months of such year to reflect the category change.

(g) Except as provided herein from and after February 1, 2001, the Maximum Regular Annual Assessment shall be automatically increased each year by an amount of five (5%) percent per year over the previous year, or the percentage increase between the first and last months of the thirteen (13) month period terminating at the end of the third (3rd) quarter of the previous Assessment year in the Consumer Price Index, U.S. City Average. All Items (1967-100) (hereinafter "C.P.I.") issued by the U. S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas", whichever of these two percentage figures is larger. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(h) Any increase in the Maximum Regular Annual Assessment shall be made in such a manner that the proportionate increase in such Assessment is the same for Owners of Single Family Lots and Townhome Lots. Any time the actual Assessment levied by the Board of Directors of the Association is less than the Maximum Regular Annual Assessment, such decrease shall be proportionate among the Owners of Single Family Lots and Townhome Lots. The decrease or increase received by each class of Owners of the various classes of property may be made disproportionately by the favorable vote of seventy-five (75%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, and by the favorable vote of seventy-five percent (75%) of the votes cast at said meeting by the Members of the classes whose proportionate share is being raised.

Section 4. Special Assessments for Improvements and Additions. In addition to the Maximum Regular Annual Assessments authorized by Section 3 hereof, the Association acting through the Board of Directors may levy Special Assessments for the following purposes:

(a) For additions to the Common Areas.

(b) To provide for the necessary facilities and equipment to offer the services.

(c) To repay any loan made to the Association to enable it to perform its duties and functions.

(d) Such Special Assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of fifty-one percent (51 %) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established herein by each class of voting members.

This provision shall be interpreted to mean that the Association may make in any one (1) year an Annual Assessment up to the maximum set forth herein, plus an additional Special Assessment. The fact that the Association has made an Annual Assessment for an amount up to the Maximum Regular Annual Assessment shall not affect its right to make a Special Assessment during the year.

The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the proportion of the Annual Assessments levied for the Assessment year during which such Special Assessments are approved by the Members. In no event shall a Special Assessment be levied during the time period where the Class C Member has 51% or more of the eligible votes.

Section 5. Reserve Funds. The Association may establish reserve funds from its Annual Assessments to be held in reserve in an interest drawing account of investments as a reserve for:

- (a) Major rehabilitation or major repairs;
- (b) For emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss; and
- (c) Initial costs of any new service to be performed by the Association.

Section 7. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations regarding assessments set forth herein shall apply to any merger or consolidation in which the Association is authorized to participate under the provisions herein and under the By-Laws of the Association.

Section 8. Date of Commencement of Annual Assessments, Due Date. Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than the time of the first transfer of a Single Family Lot or Townhome Lot following the issuance of a Certificate of Compliance/Occupancy or similar instrument for the dwelling constructed on said Lots. Further, there shall be paid to the Association at the time of the first transfer of each and every Single Family Lot or Townhome Lot following the issuance of a Certificate of Compliance or similar instrument for the dwelling constructed on said Lots an amount equal to one-fourth (1/4) of the amount of the Annual Assessment then in effect in order to establish a working capital fund. Such amounts shall be in addition to and shall not be considered an advance payment of any portion of the Annual Assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Single Family Lot or Townhome within the Assessment Schedule as provided herein above, and shall, at that time, direct the preparation of an index of the Properties and Annual Assessments applicable thereto, and any Special Assessments applicable thereto, which shall be kept in the office of the Association and which shall be open to inspection by any Member. Written notice of Assessment shall thereupon be sent to every Member subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said Assessments a certificate in writing signed by an Officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid. If the Board of Directors authorizes a Billing Agent to collect Assessments, the Certificate of the said Billing Agent shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid.

Section 10. Payment and Collection of Assessments. If the Annual Assessment or any Special Assessment is not paid on or before the past due date specified in the assessment bill (the "Assessment Bill") as mailed to the Owner(s), then such Assessment shall become delinquent and shall (together with interest thereon at the maximum annual rate permitted by law from the due date and cost of collection thereof including a reasonable attorney's fee as hereinafter provided and applicable late fees) become a charge and continuing lien on the land and all improvements thereof, against which each such Assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Additionally the Board of Directors may impose the maximum late charge on any unpaid sum allowed by law.

If the Assessment is not paid within thirty (30) days after the past due date indicated in the Assessment Bill, the Association may, in addition to enforcing a lien as provided hereunder, bring an action at law against the Owner personally and there shall be added to the amount of such Assessment the costs of preparing the filing of the Complaint in such action and a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee together with the costs of the action. The lien of the assessment shall be as of the due date of the assessment indicated in the Assessment Bill.

If the Board of Directors of the Association elects to utilize a Billing Agent to collect Assessments, interest which shall accrue on past due sums will be the maximum interest rate which such agent may lawfully charge.

Further, the Association may in addition to the other remedies provided for hereunder, suspend an owner's right to use any recreational facilities which may constitute a part of the Common Area for such time as an assessment remains unpaid as provided in Section 1 of Article XI hereunder.

Section 11. Subordination of the Lien. The Lien of the Assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any portion of the Property. In the event a creditor acquires title to any property subject to Assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to Assessments accruing after such acquisition.

Section 12. Exempt Property. The following property, individuals, partnerships or corporations subject to this Declaration shall be exempted from the Assessment, charge and lien created herein:

- (a) All lands and any improvements thereon designated in any way as Common Area.
- (b) All lands and any improvements thereon committed to the Association through express written notification by the Declarant to the Association of intent to convey to the Association.

(c) Open Space Areas herein.

(d) Property which is used for the maintenance, operation and service of facilities within Common Areas.

(e) Property which is used for the maintenance, operation and service of utilities within the Property.

(f) The grantee in conveyances made for the purpose of granting utility easements.

Section 13. Annual Statements. The President, Treasurer or such other Officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than One Thousand and No/100 Dollars (\$1,000.00). Such Officer shall furnish to each Member of the Association, who may make request therefor in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copy may be furnished to the other Member either in person or by mail. Any holder of a first mortgage on a Single Family Lot or Townhome Lot shall be entitled upon written request to a financial statement for the immediately preceding fiscal year.

Section 14. Annual Budget. The Board of Directors shall prepare and adopt, at least sixty (60) days prior to the Annual Meeting of the Association, a proposed budget outlining anticipated receipts and expenses for the upcoming fiscal year. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send to all Owners a written summary of the budget which may be sent together with the notice of the Annual Meeting. The summary of the budget or the notice of meeting, if sent together therewith, shall include a statement that the budget may be ratified without a quorum. The Annual Meeting shall be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. For purposes of the ratification of the budget, there shall be no requirement that a quorum be present at the meeting. The proposed budget shall be ratified unless at that meeting a majority of the votes of the Membership of the Association reject the proposed budget. In the event the proposed budget is rejected, the periodic budget last ratified, or otherwise then in effect, shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

ARTICLE V

FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to maintain such structures and/or dwellings as may be required under the provisions of any Supplemental Declaration. Further, the Association shall be authorized to own and/or maintain Common Areas, equipment, furnishings and improvements devoted to the following uses.

(a) For roads, roadways, roadway medians and parkways along said roads or roadways,

cul-de-sac islands, and neighborhood or other area entrances throughout the Property;

(b) For sidewalks, walking paths or trails, bicycle paths and other recreational paths through the Property;

(c) For transportation facilities throughout the Property

(d) For security and fire protection services including security stations, guardhouses, police equipment, fire stations and fire fighting equipment, and buildings used in maintenance functions;

(e) For emergency health care including ambulances, rescue squad facilities, emergency care medical facilities and the equipment necessary to operate such facilities;

(f) For purposes set out in deeds by which Common Areas are conveyed to the Association, provided that such purposes shall be in accordance with the terms of this instrument;

(g) For indoor and outdoor recreational and community facilities;

(h) For water and sewage facilities (including without limitation stormwater management facilities) and any other utilities, if not adequately provided by a private utility, County or City.

(i) For providing any of the services which the Association is authorized herewith or under Chapter 47F of the North Carolina General Statutes.

The Association shall also be authorized to borrow funds from the Declarant or other lenders to fund the provision for services (described below), issue promissory notes and security instruments therefore, and repay such loans through future annual assessments.

In addition to the above, the Association shall be responsible to maintain landscaping and improvements within and adjoining public dedicated rights of way in The Villages of Fox Run such as landscape islands, special landscape paving, landscaping adjacent to roads and signage.

Section 2. Minimum List of Functions and Services. The "Minimum List of Functions and Services" shall establish and defined the minimum level of functions and services which the Association must furnish to its Members. The "Minimum List of Functions and Services" is as follows:

(a) The Association shall provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the By-Laws of the Association, including, but not limited to, legal, accounting, financial and communications services.

(b) The Association shall administer and enforce the covenants and restrictions established in this Declaration and also established in any Supplemental Declaration, including, but not limited to, the following:

(1) The Association shall set Assessments, levy cash Assessments, notify the Members of such Assessments and collect such Assessments;

(2) The Association shall prepare accurate indexes of Members, Property Classifications, Votes and Assessments;

(3) Upon such time as the Declarant is no longer authorized to appoint the members of the Architectural Review Committee, the Association shall operate as Architectural Review Committee as provided herein;

(4) The Association shall maintain and operate all Common Areas and;

(5) The Association shall hold Annual Meetings and Special Meetings hold elections for the Board of Directors as required and give Members "proper notice" as required; and

(6) The Association shall prepare Annual Statements and Annual Budgets and shall make the financial books of the Association available for inspection by Members at all reasonable times.

(7) The Association shall operate and maintain the stormwater facilities pursuant to Part 10, Chapter 9 of the Raleigh City Code and pursuant to Exhibit C; and in furtherance thereof shall enter into the Escrow Agreement for said operation and maintenance.

(c) Should the Declarant appoint the Association its agent for the administration and enforcement of any of the provisions of this instrument or any other covenants and restrictions of record, the Association shall assume such responsibility and any obligations which are incident thereto.

(d) The Association shall provide appropriate liability and hazard insurance coverage as provided herein for improvements and activities on all Common Areas.

(e) The Association shall provide appropriate Director's and Officers' Legal Liability Insurance and indemnify persons pursuant to the provisions of the Articles of Incorporation of the Association.

(f) The Association shall keep a complete record of all its acts and corporate affairs.

(g) The Association shall provide regular and thorough maintenance and cleanup of all Common Areas, including, but not limited to, mowing of grass, fertilization as needed, landscape maintenance as needed, pickup and disposal of trash, washing down of picnic tables and benches as needed, painting, repairs to and replacement of the noise wall adjacent to all improvements as needed and, to the extent not provided by a governmental entity or utility.

ARTICLE VI

INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the Common Area and upon other property as the Association may deem necessary or desirable shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear all in accordance with Section 47F - 3-113 of the North Carolina General Statutes. The Association may re-evaluate its

coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property included in the Common Area shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the Common Area and the use and operation thereof with limits of liability therefor of not less than One Million Dollars (\$ 1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Authority, Veterans Administration or Federal National Mortgage Association. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the annual assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owners as an assessment according to the provisions regarding assessments contained herein.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VII

AMENITIES

Section 1. General. In order to facilitate the development of the Property, Declarant or its assignees may construct upon the Property various amenities (the "Amenities") including playgrounds, lakes and or a swimming pool facility as provided in the Development Plan. Declarant, for itself, its successors and assigns and its agent and the Association, for itself, its successors and assigns and its agent, reserve a perpetual and alienable easement to go on, over and under any Open Space or Common Area or any other portion of the Property as may be reasonably necessary in order to construct, repair and maintain the Amenities as shown by the Development Plan. Except as otherwise provided herein, such rights shall not create any obligations on the part of the Declarant or the Association to construct, maintain or provide any Amenity.

Section 2. Construction of Amenities. Those Owners who acquire title directly from Declarant to those portions of the Property upon which Amenities are located or are to be located may have agreed to construct said Amenities. In the event any Owner is obligated to construct any Amenities by virtue of the terms of any contract between said Owner and Declarant, said Amenity shall be completed in a timely fashion. If an Amenity is not completed in a timely fashion, the Declarant and the Association, and their successors, assigns and/or agents, shall have the right to enter upon such property and complete construction of the Amenity. Any such entry shall not be deemed trespass and the cost of such action shall be billed to the Owner and the cost of such corrective action shall act as a lien upon all portions of the Property owned by such Owner. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any action to effect compliance with this paragraph.

Section 3. Conveyance to Association. At such time as an Amenity is completed in accordance with such designs and standards as are required by all appropriate governmental authorities, title to the Amenity and surrounding Open Space shall be conveyed to the Association by a North Carolina Special Warranty Deed conveying fee simple marketable title to such parcel free and clear of all encumbrances other than those specifically accepted by the Association. Upon such conveyance, the Association shall be responsible for the maintenance of the Amenity. In no event, however, shall the Association be obligated to accept any deed conveying title to any parcel upon which an Amenity is located prior to the time at which (i) the Amenity has been completed in accordance with all appropriate governmental regulations; (ii) if a Certificate of Compliance for the Amenity is required, the time at which said Certificate has been issued; (iii) all deposits and/or performance bonds required by the appropriate governmental authorities are in place; and (iv) fee simple title and surrounding Open Space, free and clear of all encumbrances other than those specifically accepted by the Association can be delivered to the Association.

ARTICLE VIII

ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. General. Anything contained in this Declaration which may be construed to the contrary notwithstanding, no tree trimming or removal, grading site preparation or change in grade or slope of any portion of the Property or erection of buildings or houses or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in fences, hedges, walls

and any other structures whatsoever, or construction of any swimming pools or other Improvements, shall be commenced, erected or maintained on any portion of the Property until the Architectural Review Committee (herein called the "Architectural Review Committee") appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements.

Section 2. Composition. For so long as there is a Class C Member, the Class C Member shall annually appoint the members of the Architectural Review Committee which will be composed of a number of individuals (which number shall be determined by the Board of Directors of the Association), each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within The Villages of Fox Run. In the event of the death or resignation of any member of the Architectural Review Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Review Committee, and thereafter, the remaining members of the Architectural Review Committee, shall designate and appoint a successor. No member of the Architectural Review Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Upon final termination of Declarant's membership in the Association, the Board of Directors of the Association shall appoint the members of the Architectural Control Committee on an annual basis provided, however, that at least one (1) member of the Architectural Control Committee be Class A Member and at least one (1) member of the Architectural Control Committee be Class B Member. At any time Declarant may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors of the Association.

Section 3. Procedure. No Improvement of any kind or nature shall be erected, remodeled or placed on any portion of the Property until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee.

With respect to the initial Improvements to be constructed on the Property, the final plans and specifications required hereunder shall include a site plan with building footprints showing distance of the Improvements from the Parcel boundaries, a final plat showing the parcel boundaries, construction drawings showing exterior elevations, a schedule of exterior materials and color scheme, and plans for landscaping. For Improvements other than initial Improvements, the detail of the plans and specifications required therefor shall be as determined necessary by the Architectural Review Committee based on the circumstances of the proposed Improvements. Final plans and specifications for all Improvements proposed to be constructed on any portion of the Property shall be submitted in duplicate to the Architectural Review Committee for approval or disapproval. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials and is authorized to charge a reasonable fee in association with its review of plans and specifications as said review is required herein. At such time as the plans and specifications meet the approval of the Architectural Review Committee, one complete set of plans and specifications will be retained by the Architectural Review Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Owner or his designated representative. Such plans and specifications as are so retained by the Architectural Review Committee shall be kept and considered as strictly confidential and shall be utilized to monitor and insure compliance therewith and for no other purpose. If found not to be in compliance with these covenants, conditions and restrictions, or if found to be otherwise unacceptable to the Architectural Review Committee pursuant hereto, one set of plans and specifications shall be returned to the Owner marked "Disapproved", accompanied by a reasonable statement of items found not

to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Any modification or change to the Architectural Review Committee approved set of plans and specifications must again be submitted to the Architectural Review Committee for its inspection and approval. The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing.

The Architectural Review Committee may, but shall not be so required, from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these covenants, conditions and restrictions.

Section 4. Jurisdiction. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on any portion of the Property which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

Section 5. Enforcement. The Architectural Review Committee and/or the Association shall have the specific, nonexclusive right (but not obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration.

Section 6. Definition of "Improvement". The term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, mailboxes, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of the foregoing. The definition of Improvement does not include shrub or tree replacements or minor pruning of shrubs and trees or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes to Improvements.

Section 7. Failure of the Architectural Review Committee to Act. If the Architectural Review Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Architectural Review Committee has approved such conforming plans and specifications and other submittals. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

Section 8. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any owner by reason of mistake of judgment, negligence, except for gross negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 9. Miscellaneous. No member of the Architectural Review Committee shall be entitled to compensation for services performed pursuant to this Article. The Association shall reimburse members of the Architectural Review Committee for reasonable out-of-pocket expenses.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Property including the Common Area.

Section 2. Use of Property. All portions of the Property shall be occupied and/or used as follows:

(a) Outside clothes lines shall not be permitted upon any Lot at locations where they can be viewed from any street or an adjacent parcel.

(b) No sign of any kind shall be displayed to the public view on any portion of the Property other than Common Area or Open Space Areas except one professional sign of not more than six (6) square feet (i) advertising the parcel for sale or rent, (ii) advertising the building contractor constructing improvements during the initial construction and sales period, and (iii) identifying the sales office and or model home of a building contractor; however, the foregoing shall not act to restrict or prohibit Declarant or home builders and/or building contractors from erecting and maintaining signs and billboards (which signs and billboards must conform to any requirements and/or signage program imposed by the Architectural Review Committee) advertising The Villages of Fox Run or portions thereof. Notwithstanding the foregoing, all signs erected and maintained must conform with all applicable governmental requirements. Further, both the Declarant and the Association shall have the right and easement, wherever there shall have been placed or constructed a sign in violation of the provisions herein contained to enter immediately upon such property and summarily remove such sign at the expense of the Owner of the parcel where the sign is located.

(c) No house trailers shall be permitted on any portion of the Property, with the exception of a trailer which may be used during the period of initial construction which shall be moved immediately upon the completion of such construction. Boats, trailers, campers, tents or temporary buildings shall not be permitted on any portion of the Property except in areas where they can not be viewed from the streets.

(d) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any portion of the Property in an exposed location except for the purpose of construction on such property and shall not be stored on such property for longer than the length of time reasonably necessary for the construction in which same is to be used.

(e) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance.

(f) To the extent permitted by law, no exterior antennae, earth satellite station or dish, microwave

dish or other similar improvement may be constructed, placed or maintained on any portion of the property without the prior written consent of the Architectural Review Committee.

(g) A resident of the residential structure constructed on the property engaging in a home occupation therein shall comply with all of the provisions of any zoning ordinance then applicable thereto and in addition to any provisions which may be contained therein, no home occupation shall be permitted which generates a significantly greater volume of vehicular traffic or on street parking than would normally occur within a residential neighborhood.

(h) No portion of the Property may be used for hotel or other transient residential purposes. Each lease relating to any portion of the Property or any Improvements thereon (or any part thereof) must be for a term of at least sixty (60) days and must provide that the tenant is obligated to observe and perform all of the terms and provisions of this Declaration applicable to such Property and/or Improvements.

(i) Each Improvement located upon the Property shall be provided with adequate space for the parking of motor vehicles located off of public streets prior to the use of occupancy of said Improvement.

(j) Prior to the occupancy of a building or structure located upon the Property, proper and suitable provisions shall be made for the disposal of sewage by connection with the City of Raleigh municipal sewer system.

Section 3. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of any Properties at locations where they can be viewed from any street or upon any portion of the Common Area or any Open Space Area.

Section 4. Animals and Pets. No stable, poultry house or yard or other similar structure shall be constructed or allowed to remain on any portions of the Property, nor shall livestock of any nature or classification whatsoever be kept or maintained on any portion of the Property without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes and provided that the Board of Directors of the Association may, in its discretion, pass rules and regulations requiring the clean-up and/or repair by pet owners of all injury, damage or refuse caused by pets to exterior portions of the Property.

Section 5. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any portion of the property. Each Owner shall refrain from any act or use which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each Owner shall keep and maintain all portions of the property owned by said Owner in a neat, orderly and well kept manner and shall keep in place adequate measures for erosion, insect, reptile, rodent and fire Review such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and wastes;
- (2) Lawn mowing on a regular basis;

- (3) Tree and shrub pruning;
- (4) Watering by means of a lawn sprinkler system or hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order;
- (6) Keeping lawn and garden areas alive;
- (7) Removing and replacing any dead plant material;
- (8) Keeping vacant land well maintained and free of trash and weeds;
- (9) Keeping parking areas and driveways in good repair;
- (10) Complying with all governmental health and police requirements;
- (11) Repainting of Improvements; and
- (12) Repair of exterior damage to Improvements.

In the event any Owner fails to maintain his portion of the Property in such fashion, the Declarant and/or the Association and their agents shall have the right to enter upon said property for the purpose of correcting such conditions, including without limitation the removal of trash, and the cost of such corrective action shall be paid by the Owner of the property so entered. Such entry shall not be made until thirty (30) days after the Owner of such property has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such condition pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant or the Association to take any such corrective action.

Section 6. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 7. Utilities Easements. Declarant reserves an easement for and the right at any time in the future to grant a right-of-way and easement for the purpose of drainage, underground or above ground installation, repair and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful in furnishing electric power, gas, sewer, telephone service, cable services, stormwater drainage (including without limitation general flowage easements for stormwater drainage) and any other utilities over, under and through all portions of the Property; provided, however, that no such easement shall be applicable to any portion of the Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved by the Architectural Review Committee as set forth herein, and (b) such portion of the Property as may be designated as the site for a building on a plot plan for erection of a building which has been approved by the Architectural Review

Committee as set forth herein. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. This reservation shall not create any obligation on the part of the Declarant to provide or maintain any utility or service. No structures, plantings or other materials shall be placed or permitted to remain in such storm water drainage easements which may interfere with such drainage or change the direction of the flow, obstruct or retard the flow of surface water through drainage channels which may be constructed within such easements.

Section 10. Erosion Review. During any period of grading and construction of the Improvements and thereafter, each Owner shall exercise and maintain such erosion Review measures, including the erection of silt fences, as may be required by the Declarant in order to minimize erosion and runoff. Compliance with the applicable erosion Review ordinance shall not constitute automatic approval by Declarant, and Declarant reserves the right to impose requirements and standards in excess of those required by law.

Section 11. Setbacks. All portions of the property shall be subject to setbacks, if at all, as may be shown on any recorded subdivision map of the Property and which are shown thereon as specifically pertaining to and affecting the subject property. The Architectural Review Committee is hereby vested with the authority to grant waivers or variances with respect to violations of such setbacks as are imposed hereby; provided, however, with respect to setbacks imposed by municipal authority, nothing herein shall relieve the requirement to comply therewith, such relief being available solely from the municipal authority imposing same.

ARTICLE X

ADDITIONAL RESTRICTIONS AFFECTING OPEN SPACE AREAS

Section 1. Open Space. It is the intent of the Declarant to maintain and enhance (or convey subject to these restrictions to the Association) certain portions of the Property which the Declarant designates as "Open Space" (hereinafter referred to as "Open Space Areas") on the Development Plan or on plats recorded at the Wake County Registry.

Section 2. Easement for Owners. An easement over all Open Space Areas is hereby granted to the Owners, their tenants and their guests, invitees and employees which easement shall entitle such Owner, tenants, guests and invitees to enjoy the Open Space Areas subject to the rules and regulations established by the Declarant.

Section 3. Uses. Land designated as "Open Space" may be employed in the construction, maintenance and enjoyment of social, recreational and community buildings or indoor and outdoor recreational establishments, except upon that which is labeled on any recorded map as "Open Space Preservation and Protection Areas", "Undisturbed Natural Buffers", "Natural Vegetative State" or with other unbuildable labels. The grassed swales, which are to be used to reduce nitrogen loads on the Property, may not be disturbed unless a written watercourse buffer permit is first obtained from the City of Raleigh.

Section 4. Declarant Rights. The Declarant reserves unto itself, its successors and assigns, and its agents, the right to enter any Open Space Areas for the purpose of constructing, landscaping, maintaining and operating any facilities constructed with the provisions herein contained, except that which is labeled on any recorded map as "Open Space Preservation and Protection Areas", "Undisturbed Natural Buffers", "Natural Vegetative State" or with other unbuildable labels. The provisions of this paragraph shall not create any obligations on the part of the Declarant to construct, landscape, maintain or operate any such facilities. The Declarant shall further have the right to landscape, grade or implant erosion review measures and to construct siltation basins, stormwater impoundments or similar means and shall have the right to take reasonable measures to provide and insure adequate drainage ways in Open Space Areas, unless otherwise prohibited herein. The Declarant reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable and releaseable easement to go on, over and under any Open Space Area to erect, maintain and use electric, cablevision and telephone poles, wires, cables (television or otherwise), conduits, drainage ways, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage or other conveniences or utilities as well as to construct and maintain a pedestrian trail network and to locate, construct and maintain siltation basins and stormwater impoundments. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, rights to make any gradings of the soil or take any other similar actions reasonably necessary to exercise the rights reserved herein. Such rights shall not create any obligation on the part of the Declarant to provide or maintain any such utility or service.

Section 5. Trash. No dumping of trash, garbage or any unsightly or offensive material shall be placed upon any Open Space except as is temporary and incidental to the bona fide improvement of the area in a manner consistent herewith.

Section 6. Public. The granting of the easement in Open Space Areas in no way grants to the public or to the owners of any lands outside the Property the right to enter any Open Space

Section 7. Declarant's Easement. The Declarant expressly reserves unto itself, its successors and assigns, and its agent, every reasonable use and enjoyment of the Open Space Areas in a manner not inconsistent herewith.

Section 8. Conveyance to Association. The Declarant reserves unto itself, its successors and assigns, the right to convey Open Space Areas to the Association. Such conveyance shall be made subject to the provisions herein and any other restrictions or limitations which the Declarant, in its sole discretion, shall elect to impose. As an appurtenance to such conveyance, the Association shall have all the powers, immunities and privileges reserved unto the Declarant under this Article as well as all of the Declarant's obligations with respect thereto; provided, however, that so long as the Declarant, its successors and assigns, is the Owner of any portion of the Property, the Declarant and its agent, in addition to and jointly with the Association, shall maintain all rights of easement reserved under this Article and shall, furthermore, retain all rights of entry granted in this Article and the retention of said rights shall in no way create any obligation on the part of the Declarant to perform any affirmative action. Portions of the Property conveyed to the Association pursuant to this provision shall become "Common Area."

ARTICLE XI

COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to and right of ingress and egress over the Common Area which shall be appurtenant to and shall pass with the title to the Property or portion thereof, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any of the recreational facilities which constitute a portion of the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any of the recreational facilities which constitute a portion of the Common Area by an Owner for any period during which any assessment against his Property remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations of the provisions hereunder; provided, however, that prior to such a suspension for an infraction of published rules and regulations and/or the provisions hereunder, such Owner shall be given notice and an opportunity to be heard and to present evidence to the Board of Directors;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof to mortgage the Common Area, which lien of such deed of trust shall be subject to the rights and easements of every Owner created herein;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded; and,

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area, to the members of his family, his lawful tenants, or contract purchasers who reside on such owner's Lot and, to his guests, invitees and licensees.

ARTICLE XII

ADDITIONAL RESTRICTIONS AFFECTING RESIDENTIAL PROPERTIES

Section I . "Residential Properties". "Residential Properties" as used in this Article shall mean and refer to all those portions of the Property designated as "Single Family Lots" and "Townhome Lots" herein.

Section 2. Square Footage. Plans required to be submitted to the Architectural Review

Committee shall not be approved unless the proposed house or dwelling unit shall contain no less than one thousand (1000) square feet of enclosed heated dwelling space for a Townhome Lot, twelve hundred (1200) square feet of enclosed heated dwelling space for a one story detached house on a Single Family Lot and fourteen hundred (1400) square feet of enclosed heated dwelling space for a one and one-half or two story detached house on a Single Family Lot. Declarant may further restrict square footage requirements under the provisions of any Supplemental Declaration.

Notwithstanding the foregoing, the Architectural Review Committee may, in its discretion, from time to time modify the requirements and restrictions set forth herein and in any Supplemental Declaration except not below one thousand (1000) square feet of enclosed heated dwelling space.

The term "enclosed heated dwelling space" does not include garages, terraces, decks, open porches, screened porches and the like area.

Section 3. General Restrictions.

(a) All Residential Properties shall be used for residential purposes, recreational purposes incidental thereto and for customary accessory uses. The use of a portion of a dwelling unit on a Residential Property as an office by the Owner or tenant thereof shall be considered a residential use if such use does not create undue customer or client traffic as determined by the Declarant, in its sole and unbridled discretion, to and from the unit on the Property.

(b) No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on a Single Family Lot other than one (1) detached single family dwelling and one (1) small accessory building which may include a detached private garage, provided the use of accessory building does not overcrowd the Single Family Lot, as determined by the Declarant in its sole discretion, and provided, further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

(c) The provisions of this paragraph or any other provision herein shall not prohibit the Declarant or persons authorized by Declarant from using any house, other dwelling units or accessory buildings as models.

Section 4. Completion of Construction.

(a) The exterior of each house, dwelling unit, phase or group of multiple family dwelling units and all other structures must be completed within one (1) year after the construction of same shall have commenced on all Single Family Lots and Townhome Lots, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fire, national emergencies or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until Certificates of Compliance have been issued by the appropriate governmental authority. During the continuance of construction, the Owner of a Lot shall require the contractor to maintain said parcel in a reasonably clean and uncluttered condition.

(b) The failure to complete the exterior of any house, dwelling unit, phase or group of multiple family dwelling units or any other structure within the time limits set forth shall be a violation and breach of these Covenants. The Declarant hereby reserves unto itself, its successors and assigns, and its agent, a

perpetual, alienable and releaseable easement and right on, under and over all Residential Properties for the purpose of taking any action necessary to effect compliance with paragraph (a) above, including without limitation, the right to enter upon said properties for purpose of completing the exterior of such house dwelling unit, phase or group of multiple family dwelling units or any other structure which is in violation of said paragraph. Such entry shall not be made until thirty (30) days after the Owner of the property has been notified in writing of the violation. The cost of such corrective action, when performed by the Declarant or its agents, shall be paid by the Owner of the property on which the corrective action is performed. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any action to effect compliance with this paragraph.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Cost of Corrective Action. Whenever the Declarant on the Association or their agent is permitted by this Declaration to correct, repair, enhance, improve, clear, preserve, remove or take any action on any portion of the Property and whenever it is stated in this Declaration that the cost of such action (the "Cost of Corrective Action") shall be paid by the Owner of the Property or which such corrective action is performed, the Cost of Corrective Action, together with such interest thereon at the maximum annual rate permitted by law and cost of collection therefore including reasonable attorney fees shall be a charge and continuing lien against all portions of the Property owned by said Owner, its heirs, successors and assigns, which is subject to the provisions of this Declaration and, in addition, shall also be the personal obligation of the Owner at the time when such Cost of Corrective Action became due and payable. The Cost of Corrective Action shall be billed at the completion of such corrective action, and all bills shall be due and payable thirty (30) days from the date of mailing of same.

If the Cost of Corrective Action not paid withing thirty (30) days after the due date, the Declarant and/or the Association or their agent may bring an action at law against such Owner personally and there shall be awarded the amount of such Cost of Corrective Action the costs of preparing the filing of the Complaint in such action and a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the Cost of Corrective Action as above provided and a reasonable attorney's fee together with the costs of the action. The lien of the Cost of Corrective Action produced for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon the Property. In the event a creditor (other than Declarant or a creditor of Declarant) acquires title to any portion of the Property pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to any lien of the Cost of Corrective Action placed upon such Property.

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

Section 3. Amendment. The covenants, conditions and restrictions of this Declaration shall run

with and bind the Property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended prior to December 31, 2008 by an instrument approved by the Board of Directors of the Association and not less than sixty-seven percent (67%) of the Owners, and thereafter by an instrument approved by not less than sixty-seven percent (67%) of the Owners.

Section 4. Amendment Form. If any amendment to these covenants, conditions and restrictions is so approved, each such amendment approved as set forth above shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

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

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

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS CONDITIONS AND RESTRICTIONS OF THE VILLAGES OF FOX RUN

By authority of its Board of Directors, The Villages of Fox Run Owners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by the owners of ____ percent of the votes of the Members of The Villages of Fox Run Owners Association, Inc. and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of The Villages of Fox Run. This the ____ day of _____, _____.

THE VILLAGES OF FOX RUN OWNERS ASSOCIATION, INC.

President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any portion of the Property.

Section 5. Cluster Unit Development. The Property is a part of a cluster unit development as

defined in Part 10, Chapter 3 of the Raleigh City Code, and as approved by the City of Raleigh in which residential density transfers are permitted; therefore, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City of Raleigh approval of additional dwellings or further subdivision of Lots. The maximum number of dwelling units that may be contained in this development is **228**, including all future annexations. The maximum number of dwelling units per acre that can be contained in the cluster unit development or transferred to portions of the cluster unit development without rezoning is **7** units per acre.

Section 6. Annexation of Additional Property. At any time during the effective term of this Declaration, Declarant may propose that the Association annex additional properties which have been or will be developed in conformity with the general plan of development for The Villages of Fox Run as follows:

Annexation of additional properties shall require the assent of two-thirds (2/3) of the votes of the voting membership of the Association at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of written proxies entitled to cast sixty-six and two-thirds percent (66-2/3%) of the votes of the membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be the same. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the voting membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Notwithstanding the above, prior to December 31, 2008, the Declarant may, from time to time, annex Additional Properties to the Property without the consent of the Members, if the Declarant should develop an additional tract or tracts of land consisting of any property contiguous to the Property. The annexation will be accomplished by recording with the appropriate Register of Deeds a Supplementary Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Upon annexation, the Additional Properties shall be deemed part of the Property and shall be subject to this Declaration. The maximum number of total acres that can be included in this cluster development is **35 acres**.

Subsequent to recordation of the Declaration of Annexation, but prior to the sale of the first Lot in the Additional Property, the landowner shall deliver to the Association one or more deeds conveying any property that will be designated as Common Areas within the Additional Properties.

Section 7. Reserved Declarant and Successor Declarant Rights. Subject to all applicable governmental ordinances, as long as Class C membership exists, the Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Section 5 of this Article; (ii) to add Common Areas; (iii) to reallocate Lots within the Property; and (iv) prior to a conveyance of that real estate to an Owner, to withdraw real estate from the Property.

Section 8. Contract Rights of Association. As long as there is a Class C membership, any contract entered into by or on behalf of the Association shall contain a provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than thirty (30)

days written notice to the other party or parties.

Section 9. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the property description address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the project or the property securing its mortgage.

(b) Any sixty (60) day delinquency in the payment of assessments owed by the Owner of the property on which it holds the mortgage.

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

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

(e) The Association's financial statement for the immediately preceding fiscal year.

Section 10. HUD/VA/FNMA/ Approval. As long as there is a Class C membership, the following actions will require the prior approval of the Department of Housing and Urban Development ("HUD"), the Veterans Administration ("VA") or the Federal National Mortgage Association ("FNMA"): Annexation of additional properties, dedication of Common Area, deeding in trust the Common Area, mergers and consolidations, recordation of any Supplemental Declaration and amendment of this Declaration. Notwithstanding anything to the contrary contained in this Declaration, Declarant at all times shall have the right to make such changes and amendments to this Declaration as may be required by HUD, VA or FNMA in conjunction with the initial approval of this Declaration by such entity; provided, however, such right and reservation shall lapse and expire upon the earlier to occur of the initial approval of this Declaration by any of such entities or the closing of the initial loan underwritten, guaranteed or insured by any of such entities which is secured by the lien of a deed of trust encumbering a portion of the Property.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL ANY USE OF ANY PORTION OF THE PROPERTY FAIL TO CONFORM TO THE DEVELOPMENT PLAN OR ANY APPLICABLE LAW OR ORDINANCE AND THE DECLARANT SHALL AT ALL TIMES HAVE THE RIGHT TO MAKE SUCH CHANGES AND AMENDMENTS TO THIS DECLARATION AS MAY BE NECESSARY TO CONFORM THIS DECLARATION TO THE REQUIREMENTS OF CHAPTER 47F OF THE NORTH CAROLINA GENERAL STATUTES.

IN WITNESS WHEREOF, the undersigned manager of Ballance Currin Properties LLC, being the Declarant herein, has hereunto set its hand and seal this 8 day of May, 2002.

Ballance Currin Properties LLC

By: *H. Leigh Ballance, Jr.*
Member/Manager

State of North Carolina
County of Wake

I, a Notary Public of the County and State aforesaid, certify that *H. Leigh Ballance, Jr.* being the Member/Manager of Ballance Currin Properties LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and notarial seal, this *May 8*, 2002.

[Signature]
Notary Public

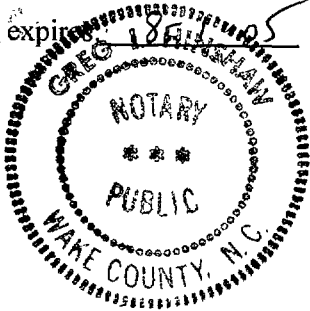
My Commission expires *18 FEB 2005*


EXHIBIT A TO AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN

Tract One:

Being all of Phase 1 Open Space, all areas shown as Open Space and Lots 1 through 10 and Lots 70 through 75 as shown on that map entitled "Recombination and Correction Plat - Village of Fox Run" recorded in Book of Maps 2001, Page 643, Wake County Registry.

Tract Two:

Being all of Phase 2 and 3 Open Space, all areas shown as Open Space, Open Space Preservation and Protection Areas and Lots 11 through 22, Lots 38 through 51 and Lots 66 through 69 as shown on that map entitled "Subdivision Map For - The Villages of Fox Run - Phase 2 & 3 Townhomes" recorded in Book of Maps 2002, Page 853, Wake County Registry.

Tract Three:

Being all of Lots 9 through 20 as shown on that map entitled "Subdivision Map For - Meadows at Fox Run - Phase One" recorded in Book of Maps 2002, Page 852, Wake County Registry.

EXHIBIT ^d TO AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN

CERTIFICATION OF VALIDITY OF AMENDMENT TO THE DECLARATION OF
MASTER COVENANTS CONDITIONS AND RESTRICTIONS OF THE VILLAGES
OF FOX RUN

By authority of its Board of Directors, The Villages of Fox Run Owners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by the owners of seventy-five percent (75%) of the votes of the Members of The Villages of Fox Run Owners Association, Inc. and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of The Villages of Fox Run.

As of the below date, there are sixteen plotted lots in The Villages of Fox Run, all recorded on Book of Maps 2001, Page 643, Wake County Registry. The owners who have consented to the AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN (Originally recorded in Book 008869, Page 1665) are as follows:

Norman R. Oates and	
Rosa G. Oates	Lot 1
Melissa Rhodes	Lot 2
Antonio S. Valles	Lot 3
Seamus D. Duerr	Lot 4
Cynthia A. Thompson	Lot 7
Teresa L. Hodges	Lot 75
F & L Developers, Inc.	<u>Lots 5, 6, 8, 9, 10, 70, 71, 72, 74</u>
Total Consent Votes	16
Total Votes	16

This the 8 day of May, 2002.

THE VILLAGES OF FOX RUN OWNERS ASSOCIATION, INC.


President

ATTEST:


Secretary



CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

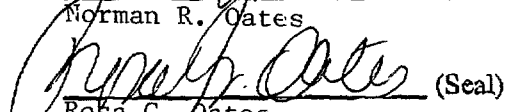
Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 8 day of May, 2002.

Lot 1

Lot _____

 (Seal)
Norman R. Oates
 (Seal)
Rosa G. Oates

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 26 day of March, 2002.

Lot 2

 (Seal)

Lot _____

_____ (Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 1 day of March, 2002.

Lot 3

Antonio S. Keller (Seal)

Lot _____

_____ (Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox
Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the
execution of this instrument to subordinate the above described real property to the foregoing Amended and
Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the
said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated
Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North
Carolina, and they do hereby further subject and subordinate their real property to the foregoing
instrument.

This the 6 day of May, 2002.

Lot 4

Seamus D. Duerr (Seal)
Seamus D. Duerr

Lot _____

_____ (Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 11 day of May, 2002.

Lot 7

Cynthia A. Thompson (Seal)
Cynthia A. Thompson

Lot _____

_____ (Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

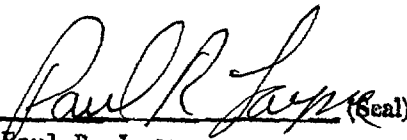
Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 7 day of May, 2002.

Lot 73

Lot _____


Paul R. Layne (Seal)

(Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

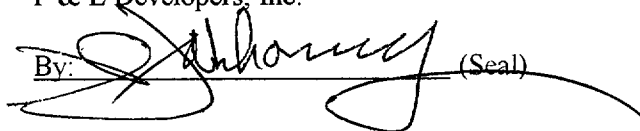
Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 3 day of May, 2002.

Lots 5, 6, 8, 9, 10, 70, 71, 72, 74
Villages of Fox Run Townhomes

F & L Developers, Inc.

By:

 (Seal)

CONSENT OF OWNER TO AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN
(Originally recorded in Book 008869, Page 1665)

KNOW ALL MEN BY THESE PRESENTS That:

Whereas, the undersigned ("Owners") are the owners and holders of Lots in The Villages of Fox Run Subdivision;

Whereas, the undersigned Owners in order to purchase the above described property, desire by the execution of this instrument to subordinate the above described real property to the foregoing Amended and Restated Declaration.

Now, Therefore, for good and valuable consideration, receipt of which is hereby acknowledged, the said Owners hereby consent to the execution and delivery of the foregoing Amended and Restated Declaration and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and they do hereby further subject and subordinate their real property to the foregoing instrument.

This the 28 day of March, 2002.

Lot 75

Jessie L. Hodges (Seal)

Lot _____

_____ (Seal)

EXHIBIT C TO AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE VILLAGES OF FOX RUN

Attached "Operations and Maintenance Manual and Budget For The Villages of Fox Run and The Meadows of Fox Run Stormwater Detention Basins and Grassed Swales" dated 02-13-02 and revised 04-21-02 and 05-02-02.



SPAULDING & NORRIS, PA

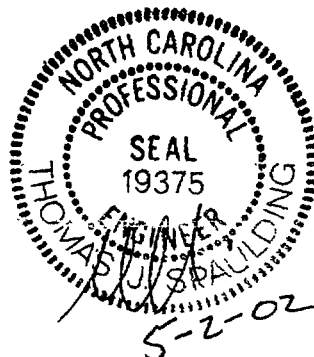
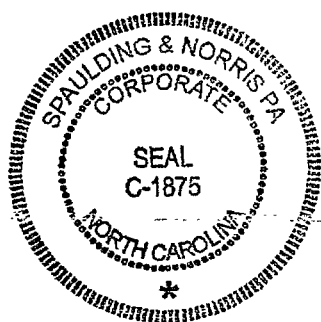
Civil Engineering & Planning

EXHIBIT C

**OPERATIONS AND MAINTENANCE MANUAL
AND BUDGET**

FOR

**THE VILLAGES OF FOX RUN AND
THE MEADOWS OF FOX RUN
STORMWATER DETENTION BASINS
AND
GRASSED SWALES
RALEIGH, NORTH CAROLINA**



**Prepared By: Spaulding & Norris, PA
972 Trinity Road
Raleigh NC 27607**

**DATE: 02-13-02
Revised 4-21-02
REVISED 5-2-02**

PROJECT LOCATION: Village of Fox Run (Originally approved as "Malone Court Townhomes" by the City of Raleigh).
The Meadows at Fox Run

DATE CONSTRUCTED: 2002

LOCATION: Raleigh, NC

RECEIVING WATER COURSE: Perry Creek

CONTRACTOR:

Impoundment: James Bobby Currin & Sons, Inc.
PO Box 1166
Fuquay-Varina NC 27526

MATERIAL SUPPLIES:

Outlet Pipes: 75 lf of 12" RCP (Basin A)
15 lf of 10" RCP (Basin B)
20 lf of 12" RCP (Basin C)
9 lf of 6" PVC (Basin D)
12 lf of 8" PVC (Basin E)
55 lf of 8" PVC (Basin F)

OPERATIONS AND MAINTENANCE MANUAL AND BUDGET
VILLAGE OF FOX RUN AND MEADOWS OF FOX RUN
STORMWATER DETENTION BASINS
AND
GRASSED SWALES

The following maintenance schedule shall be applied to the watershed protection devices for the Village of Fox Run Townhomes and The Meadows of Fox Run. These devices include the six dry detention basins located within the property, and the grassed swales which convey stormwater runoff to dry detention basins B and C. The basins are referred to as Basin A, Basin B, Basin C, Basin D, Basin E, and Basin F and are constructed as follows:

Basin A: Shall be constructed as part of The Villages at Fox Run Phase 1. Basin A is located in the north-east corner of the property, where Kohler Lane makes a 90 degree turn. It is located between town home units 16 and 17 as labeled on the approved construction drawings dated 12-06-01. Stormwater is collected via the street storm drainage system, and conveyed into the basin via 30 linear feet of publicly maintained 18" RCP. Stormwater exits the basin via 75 linear feet of 12" RCP, and is discharged onto natural ground. Basin A is 5' deep and has a capacity of 7200 cf.

Basin B: Shall be constructed as part of The Villages at Fox Run phase 7. Basin B is located in the south-east corner of the property, where Kohler Lane approaches the stream crossing. It is located adjacent to town home unit 93 as labeled on the approved construction drawings dated 12-06-01. Stormwater is collected by the publicly maintained street storm drainage system, and discharged into the grassed swale adjacent to the basin. Stormwater is conveyed into the basin via 100 linear feet of grassed swale. Stormwater exits the basin via 15 linear feet of 10" RCP, is discharged into a level spreader, and then discharged onto natural ground. Basin B is 4' deep and has a capacity of 732 cf.

Basin C: Shall be constructed as part of The Villages at Fox Run phase 6. Basin C is located in the south-west corner of the property, at the end of Four Towns Lane. It is located adjacent to town home unit 78 as labeled on the approved construction drawings dated 12-06-01. Stormwater is collected via the street storm drainage system, and conveyed into the basin via 68 linear feet of publicly maintained 15" RCP. Stormwater exits the basin via 20 linear feet of 12" RCP, and is discharged into a grassed swale. Storm water is conveyed through 100 linear feet of grassed swale, is discharged into a level spreader, and then discharged onto natural ground. Basin C is 2' deep and has a capacity of 1290 cf.

Basin D: Shall be constructed as part of The Meadows at Fox Run phase 2. Basin D is located at the North-West corner of the intersection of Kohler Lane and Balance Fox Drive. It is located within lot 28 as labelled on the approved construction drawings. Stormwater is collected by the City of Raleigh's storm drainage system and discharged into the basin through 25 linear feet of 15" RCP that is owned and maintained by the City of Raleigh. Detained stormwater leaves the basin through 9 linear feet of 6" PVC pipe which discharges into a level spreader that returns the runoff to sheet flow. Basin D is 2 feet deep and has a capacity of 993 cf.

Basin E: The Meadows at Fox Run phase 2. Basin E is located on the North side of Balance Fox Drive at the rear of lots 24, 25, and 26 as shown on the approved construction drawings. Stormwater is collected by the City of Raleigh's storm drainage system and discharged into the basin through 68 linear feet of 15" RCP that is owned and maintained by the City of Raleigh. Runoff empties out of the basin through 12 linear feet of 8" PVC pipe that discharges into a level spreader that returns the runoff to sheet flow. Basin E is 2 feet deep and has 1960 cf of capacity.

Basin F: The Meadows at Fox Run phase 1. Basin F is located on the North side of Balance Fox Drive at the rear of lots 18, 19, and 22 as shown on the approved construction drawings. Stormwater is collected by the City of Raleigh's storm drainage system and discharged into the basin through 76 linear feet of 15" RCP that is owned and maintained by the City of Raleigh. Runoff empties out of the basin through 55 linear feet of 8" PVC pipe that discharges into a level spreader that returns the runoff to sheet flow. Basin F is 2 feet deep and also has 1960 cf of capacity.

I. MAINTENANCE OF EMBANKMENTS AND GRASSED SWALES.

A. Vegetation

The embankments and swales have a ground cover of fescue which if properly maintained will prevent erosion and provide an easy surface for inspection. Grass should be fertilized every October and April.

1. Re-Seeding - Periodically re-seeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) should be applied at a minimum rate of 12 to 15 pounds per 1,000 SF. The seed should be evenly sewn at a rate of three pounds per 1,000 SF. The seed should be covered with soil to the depth of approximately 1/4". Immediately following the planting, the area should be mulched with straw.

2. Mowing - Grass mowing, brush cutting and removal of weed vegetation will be necessary for the proper maintenance of the embankments and swales. All embankment slopes and swales should be mowed when the grass exceeds 6" in height. Acceptable methods include the use of weed whips or power brush cutters and mowers.

B. Erosion

Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The dams and the area around the outlet pipes should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the embankment. Rills and gullies should be filled with suitable soil compacted and then seeded. Methods described in Section I-A, on vegetation, should be used to properly establish the grass surface. Where eroded areas are detected, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently problems result from the concentration of runoff to one point of the embankment crest instead of a uniform distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the runoff to areas which are not experiencing erosion.

problems. The top of the dams should not be allowed to be used for pedestrian or bicycle traffic.

1. Abutment Areas - The abutment is the line formed where the embankment fill comes into contact with the existing slope. Runoff from rainfall concentrates in these gutter areas and can reach erosive velocities because of the steep slopes. If a normal stand of grass cannot be maintained on the abutments, additional measures may be needed such as jute matting to provide for the establishment of a good ground cover.

2. Upstream embankment slope - Erosion problems can develop on the upstream face of the dam due to the fluctuation of water level in the basin. This is a result of a combination of wave actions and ground saturation which occurs from the elevated water levels. The erosion generally occurs as the water level falls and the saturated ground becomes subjected to the wave action. If erosion becomes a problem, it may necessitate the installation of a stone armoring along the zone subject to fluctuating water level. This would consist of 18" of NCDOT Class B stone for erosion control underlain with Mirafi 140 geotextile fabric. It should be centered at the point of the erosion problem and covering an area two feet above and below the approximate center of the eroded area.

C. Seepage

1. Detection - Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is more lush and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations for seepage. Also, the contact between the embankment and the spillway conduit is a very common location which is generally attributed to poor compaction around the conduit. Due to the way in which conduits are put in, this is generally most evident on the underside of the conduit. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil" evident as a spring carrying soil. The soil usually deposits around the boil area and is

evident by the sedimentary deposits accompanying it. The movement of the water itself is not dangerous but if soil particles are being carried with it, then it can create a shortcut for the piping of soil.

D. Cracks, Slides, Sloughing and Settlement

1. Cracks - The entire embankment should be inspected for cracks. Short, isolated cracks are usually not significant, but larger (wider than 1/4"), well defined cracks indicate a serious problem. There are two types of cracks: transverse and longitudinal.

Transverse cracks appear crossing the embankment and indicate difference of settlement within the embankment. These cracks provide avenues for seepage and piping could develop.

Longitudinal cracks run parallel to the embankment and may signal the early stages of a slide. In recently built structures, these cracks may be indicative of poor compaction or poor foundation preparation resulting in consolidation after construction.

2. Slides - Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.

3. Settlement - Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree this is normal and should be experienced. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often precedes the failure.

4. What to do if seepage, cracks, slides, or settlement are detected:

If any of the above items are detected there may be signs of significant problems which could lead to the failure of the structure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions of r correcting them. If the professional is not immediately able to inspect the dam, then the bottom drain should be opened and the water level lowered to remove the risk of failure until a professional can observe these problems.

E. Rodent Control

Generally in this urban environment, rodents are not a problem. Rodents such as ground hogs, muskrats, and beavers are attracted to dams and reservoirs and can be quite dangerous to structural integrity and proper performance of the embankment and spillway. Groundhog and muskrats thrive on burrowing in the man-made earth embankments which become pathways for seepage. In the event that burrows are detected within the dam then the rodents should be dealt with by removal.

II. OPERATION

A. Record Keeping

Operation of a dam should include recording of the following:

1. Annual Inspection Reports - A collection of written inspection reports should be kept on record in Section III of this manual. Inspection should be conducted annually. Copies should be provided to the City of Raleigh Stormwater Management Section of the Engineering Department.

2. Observations - All observations should be recorded. Where periodic inspections are performed following significant rainfall events, these inspections should be logged into the Periodic Inspection, Operation & Maintenance Form in Section III of this manual. Significant rainfall can be defined as a One-year storm event, or rainfall of approximately 3" in a 24 hour period.

3. Maintenance - Written records of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation and Maintenance Form in Section III of this manual.

4. Other Operational Procedures - The owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the dam over time should be recorded on the as-builts.

C. Sedimentation and Dredging

Sedimentation from establishing areas tributary to the basins will eventually result in the reduction of the retention pool and eventually will have to be removed. The frequency of this sediment removal can be reduced by ensuring that the tributary areas be stabilized with a vegetative ground cover such that it restrains erosion. This would include a periodic application of fertilizer and our other treatments necessary to promote a stable ground cover and minimize sedimentation to the basins. The maintenance on these basins requires that when the sediment is within 6 inches of the top of the outlet pipe that the sediment must be removed and the original basin restored. The frequency of required sediment removal is estimated to be every five years. For aesthetic purposes it may be desirable to maintain it prior to this point. Generally the dredging process begins with the removal of as much water as is possible from the deposited silt so the material can be excavated with conventional equipment for trucking offsite. The removed material should be hauled offsite to a suitable landfill site or mounded somewhere on site and stabilized with ground cover sufficient to restrain erosion.

III. INSPECTION, OPERATION AND MAINTENANCE CHECKLISTS

The grassed swales and the slopes of the dry detention basins shall be mowed according to the season. The maximum grass height shall be 6 inches. The dry detention outlet structures shall be kept in good working order. In the case the ownership of the dry detention basins transfers, the current owner shall, within thirty days of the transfer of ownership, notify the City of Raleigh Engineering Dept., Stormwater Management Division of such ownership transfer. This property and the watershed protection devices are also subject to the operation and maintenance manual filed relative to this project site.

MONTHLY MAINTENANCE

1. Check and clear orifice of any obstructions.
2. Check basin side slopes; remove trash and repair eroded areas before the next rainfall.

QUARTERLY MAINTENANCE

1. Inspect the grassed swales for proper functioning. Clear any trash and clear piping of any obstructions.
2. Check outlet pipes for any undercutting of impoundment. Repair if necessary.
3. Repair damaged or broken pipes.
4. Check rip rap for sediment. Remove sediment if necessary.

SEMI-ANNUALLY

1. Check to see if accumulation of sediment has occurred and remove accumulated sediment from bottom of detention basin as necessary to maintain full basin capacity.
2. Over-seed grassed swales twice yearly until grass is established and then over-seed yearly.
3. Inspect rip-rap for movement and erosion.
4. Inspect Level Spreaders
5. Inspect for dam slides, cracks, rodent burrows, sloughs, seepage, and settlement. Improvements to the embankment shall be made immediately.

Proposed Budget

STORMWATER DETENTION BASIN
VILLAGE OF FOX RUN TOWNHOMES, RALEIGH NORTH CAROLINA
INSPECTORS _____

GRASSED SWALES
VILLAGE OF FOX RUN TOWNHOMES, RALEIGH NORTH CAROLINA
INSPECTORS _____

STORMWATER DETENTION BASIN
THE MEADOWS OF FOX RUN, RALEIGH NORTH CAROLINA
INSPECTORS _____

GRASSED SWALES
THE MEADOWS OF FOX RUN, RALEIGH NORTH CAROLINA
INSPECTORS _____

EXHIBIT D

(Also Addendum to Attachment #1, Operations and Maintenance Manual and Budget For The Villages of Fox Run and The Meadows of Fox Run Stormwater Detention Basins and Grassed Swales" dated 02-13-02 and revised 04-21-02 and 5-02-2002.)

Total cost:	\$37,455.00
Developer paid 15%	<u>5,618.00</u>
Balance	\$31,837.00

Association Annual Sinking Fund Payments
67% equals \$21,331.00 Each of next 5 years = \$ 4,266.00
33% equals \$10,339.00 Each of last 5 years = \$ 2,068.00

Association Annual Maintenance Cost Estimate = \$10,200.00

First Five Years:

Annual maintenance cost to HOA	\$10,200.00
Plus annual sinking fund payment	<u>4,266.00</u>
Total annual payment	\$14,446.00 (the first year less \$4,266.00 paid by developer)

Second Five Years:

Annual maintenance cost to HOA	\$10,200.00
Plus annual sinking fund payment	<u>2,068.00</u>
Total annual payment	\$12,268.00

Divided by 131 total units = \$111.00 per year per unit added to HOA budget.

Developer pays into escrow 15% = \$5,618.00 plus first year sinking fund of \$4,266.00 equals developer payment of \$9,884.00 as initial Escrow payment.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 009434 Page : 01197 - 01250

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



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

North Carolina - Wake County

The foregoing certificate___ of _____
_____ *Greg L. Ketch* _____

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

Laura M. Riddick, Register of Deeds

By: *[Signature]*
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ *54* _____ New Time Stamp
of Pages