

**PREPARED BY: Harold E. Russell, Jr.**

**HOLD FOR: Harold E. Russell, Jr. #167**

Wake County, NC 256  
Laura M Riddick, Register Of Deeds  
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**STATE OF NORTH CAROLINA**

**WAKE COUNTY**

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR EDGEWOOD TOWNHOMES**

**THIS DECLARATION**, made on the date hereinafter set forth by The New Fortis Corporation, a North Carolina Corporation hereinafter referred to as the "Declarant" and Sandler at Wakefield, L.L.C., a North Carolina Limited Liability, referred to herein as "Wakefield",

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of the real property described on Exhibit A, Wakefield is the owner of the property described in Exhibit A-1; and

**WHEREAS**, the Declarant has the contractual right to purchase from Wakefield the property described in Exhibit A-1.

**WHEREAS**, although separate easements, covenants and restrictions (which may or may not be similar to those herein contained) have been imposed for Wakefield Plantation recorded in Book 8099, Page 180 and as thereafter amended and including all subsequent amendments thereto (herein defined as the "Master Declaration"), Declarant desires to impose pursuant hereto, additional easements, covenants and restrictions upon all of The Properties (hereinafter defined) covered by this Declaration, and to establish certain rights for, and impose certain obligations upon, the Owners of The Properties described in Exhibit A and A-1, and any additions thereto.

**WHEREAS**, Declarant will convey The Properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of The Properties, for the maintenance of Sub-Association Common Properties and improvements thereon as described herein, and accordingly desires to subject The Properties, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens as hereinafter set forth, (the "Declaration" as herein defined) each and all of which is hereby declared to be for the benefit of said Property and each and every Owner of any and all parts thereof; and

**WHEREAS**, Declarant has deemed it desirable for the efficient preservation of the values and amenities of The Properties create an entity to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Sub-Association Common Properties as defined herein, administering and enforcing the covenants and restrictions governing said Sub-Association Common Properties, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents;

**NOW, THEREFORE**, Declarant hereby declares that all the Existing Property described on Exhibit A and any Additional Property (hereinafter defined) shall be held, occupied, used, transferred, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of The Properties. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in The Properties or any part thereof, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

The following words and terms, when used in this Declaration or any amendment hereto, or any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows (terms and words used herein without definition shall have the meanings, if any, specified therefor in the "Definitions" section of the North Carolina Non-Profit Corporation Act "the Act") or in the "Definitions" section of the North Carolina Planned Community Act (the "PCA").

- (a) "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.
- (b) "Amenities" shall mean the facilities constructed, erected or installed on the Sub-Association Common Areas for the use, benefit and enjoyment of Members.
- (c) "Association" or "Sub-Association" shall mean and refer to Edgewood Townhomes Association, Inc., its successors and assigns.
- (d) "Board" is defined as the Board of Directors of the Association. The Board is responsible for the management and administration of the Association. Unless otherwise specifically provided in this Declaration, other governing documents or applicable Legal Requirements, all rights, powers, easements, functions, services,

obligations and duties of the Association may be performed or directed by the Board on behalf of the Association.

- (e) "Builder" is defined as a Person, other than the Declarant, who is regularly in the business of constructing Dwellings on real property for resale to other Persons, and who purchases or becomes the Owner of one or more Lots in The Properties for the purpose of constructing thereon a Dwelling for resale to other Persons.
- (f) "City" is defined as the City of Raleigh, North Carolina.
- (g) "Common Area or Common Property" is defined as all real property owned or leased by Wakefield Plantation Community Association, Inc. the Master Association.
- (h) "Contiguous" is defined as including all of the following: adjacent to; across a public or private street right of way from; and separated from by an easement, Sub-Association Common Property, property owned by the City or Common Property.
- (i) "Declarant" shall mean and refer to The New Fortis Corporation, and its successors and assigns.
- (j) "Declarant Control Period" is defined as the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:
  - (1) December 31, 2007.
  - (2) the date on which the total number of votes entitled to be cast by the Class A Members of the Association equals the total number of votes entitled to be cast by the Declarant, as the Class B Member of the Association (the total number of votes of either of the two classes of Membership in the Association may be increased or decreased by the annexation of Additional Property or withdrawal of portions of the Property as provided herein), and in such instances Class B Membership may be reinstated each time such annexation or withdrawal results in the Class B Member votes exceeding the Class A Member votes.
  - (3) Relinquishment or transfer to anyone other than Wakefield or a successor Declarant of all Special Declarant Rights as provided in Section 47F-3-104 of the PCA.
- (k) "Dwelling " shall mean and refer to a place of residence constructed upon a Lot within the Properties and any garages that are owned with the Dwelling.

- (l) "Existing Property" is defined as the real property subjected to this Declaration as described in Article II and on **Exhibit A and Exhibit A-1** attached hereto and incorporated by reference.
- (m) "Landscape Sub-Association Easement" is defined as a type of Sub-Association Common Property consisting of an area within or Contiguous to The Properties that is reserved or established as an easement of the Association for the use, enjoyment or benefit of the Members and for the maintenance therein of any one or more of the following: plants, trees, flowers, bushes, other landscaping materials, fencing, signs, lighting equipment, irrigation equipment and other.
- (n) "Legal Requirement" is defined as any Duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the City of Raleigh, North Carolina, the County of Wake, North Carolina, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the portion of The Properties, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.
- (o) "Lot" shall mean and refer to any plot of land shown intended for construction of a Dwelling thereon upon any recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant and the City of Raleigh ).
- (p) "Lot in Use" shall mean and refer to any Lot on which a Dwelling has been substantially constructed and made substantially ready for occupancy as a Dwelling. It is the intent that when a Dwelling is ready for occupancy, excepting final punch list items and decorative items to be selected by a home buyer, that the Dwelling be subject to payment of full Association dues. In the event of a dispute, the ruling of the Board shall be binding. In addition to the foregoing, a Lot may become a Lot in Use by contractual agreement between the Declarant and the Owner of such Lot. Any Dwelling for which a certificate of occupancy has been issued will be regarded as a "Lot in Use".
- (q) "Master Association" is defined as Wakefield Plantation Community Association, Inc., a North Carolina nonprofit corporation incorporated under the Act to serve as the Association under the Master Declaration, and its successors and assigns.
- (r) "Member" shall mean and refer to every person or entity who holds membership in the Association.
- (s) "Owner" is defined as the owner of record as shown in the registry, whether one or more Persons, of fee simple title to a Lot but excluding those having an interest in the foregoing as a result of a contract, option to purchase, or as security for an obligation.

- (t) "Sign Sub-Association Easement" is defined as a type of Sub-Association Common Property consisting of an area within or Contiguous to The Properties that is reserved or established as an easement of the Association for the use, enjoyment, or benefit of the Members and for the maintenance therein of any one or more of the following: signs and associated landscaping materials, lighting equipment, irrigation equipment and other associated equipment and devices. A Sign Sub-Association Easement may be established or reserved by a notation on a plat recorded in the Registry or by a written document recorded in the Registry.

- (u) "Sub-Association Common Expense" shall mean and include:

- (1) All sums determined by the Board of Directors to be Sub-Association Common Expenses of the Association;
- (2) Expenses for maintenance of the exterior of Dwellings, as provided in this Declaration;
- (3) Expenses of administration, maintenance, repair, restoration or replacement of the Sub-Association Common Areas, including private streets;
- (4) Expenses declared to be Sub-Association Common Expenses by the provisions of this Declaration or the Bylaws;
- (5) Premiums for hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
- (6) Ad valorem taxes and public assessment charges, if any, lawfully levied against Sub-Association Common Areas or other assets of the Association;
- (7) Expenses agreed by the Members to be Sub-Association Common Expenses of the Association;
- (8) Unpaid assessments resulting from the purchase of a dwelling at a foreclosure sale (such assessment shall be collectible from all Members of the Sub-Association, including the purchaser at the foreclosure sale, his successors and assigns).
- (9) All other expenses incurred by the Association in performing its functions and providing services under this Declaration, including operating, Association management, administrative expenses and unexpected contingencies.

Provided, however, the term Sub-Association Common Expenses does not include the costs of the initial improvements constructed or placed in any Sub-Association Common Property by the Declarant.

- (v) "Sub-Association Common Property or Sub-Association Common Area" (the terms being used interchangeably herein) is defined as all real property and improvements thereon owned by the Association for the use, enjoyment and benefit of the Members, and all rights in and to all easements in or on real property together with all associated improvements in or on such easements granted to or reserved by or on behalf of the Association (or by or on behalf of the Declarant for later transfer or assignment to the Association) for the enjoyment or benefit of its Members. Sub-Association Common Property typically will be established by an instrument or plat recorded in the Registry, and identified in such instrument as "Sub-Association Common Area", "Sub-Association Common Property", "Sub-Association Private Street", "Sub-Association Private Open Space", "Sub-Association Common Open Space", "Sub-Association Greenway", "Sub-Association Open Space", "Sub-Association Buffer", "Sub-Association Trail", "Open Space", "Private R/W" or some other similarly descriptive term. Sub-Association Common Property also includes all "Landscape Sub-Association easements" and "Sign Sub-Association Easements" as defined herein.

Sub-Association Common Property or Sub-Association Common Area also shall include all property from time to time included in the definition of "Common areas" contained in Section 10-3003 of the Raleigh City Code or in any replacement section of the Raleigh City Code. At the time of the execution of this Declaration, Section 10-3003 defines "Common areas" as "Property intended for the use and benefit of the residents of a particular development; common areas include (1) any private street, (2) any stormwater device that serves more than one (1) dwelling unit, (3) any utility line located outside public street rights-of-way and public utility easements, and not located on an individual lot, (4) any site or facility designated as common on any recorded plat or in any declaration of covenant, and (5) any City Code required shared facility or open space."

- (w) "Subdivision Plan" is defined as the most current development plan approved by the City of Raleigh, including a subdivision plan or cluster development plan for the applicable portion of The Properties. When two or more subdivision plans are approved for the same portion of The Properties, the most current and most specific plan controls.
- (x) "The Properties" is defined as the Existing Property governed by this Sub-Association, together with all Additional Property that is annexed.
- (y) "Wakefield Plantation" is defined as the real property in Wake County, North Carolina, which is now or in the future a part of the Declaration for Wakefield Plantation, recorded in Book 8099, Page 180 and all amendments thereto.

## ARTICLE II

### PROPERTIES, ANNEXATION AND WITHDRAWAL

Section 1. Property Made Subject to Declaration. The Existing Property described on Exhibits A and A-1 is hereby made subject to this Declaration and the Existing 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 and the Master Declaration.

Section 2. Declarant Annexation/Removal of Property. If, prior to December 31, 2007, Declarant or Wakefield owns any real property during the Declarant Control Period, which it desires to add to the scheme of this Declaration ("Additional Property"), it may do so by filing of record a Supplemental Declaration (herein so called) which shall extend the scheme of this Declaration to such Additional Property or portions thereof; provided, however, that such Supplemental Declaration as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration. Declarant and Wakefield each reserves the right to annex other land Contiguous to the land subject to this Declaration. Pursuant to this section, Article II, 2, all annexations undertaken must be undertaken on or before December 31, 2007 and must be approved by the City of Raleigh.

Section 3. Annexation of Property by Others. If a person or entity other than Declarant or Wakefield desires to add property to the scheme of this Declaration, such property may only be added with the assent of two-thirds (2/3) of the votes of each class of Members.

Section 4. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may determine, which provisions may be more, but not less, restrictive than the provisions of the Declaration; provided if such party is other than Declarant, or Wakefield as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant during the Declarant Control Period and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to The Properties or to previously added Additional Property except as provided in Section 5 of this Article. All Sub-Association Common Properties contained in Additional Property will be conveyed to the Association in conformity with

Article II, Section 6 and all Common Properties contained in Additional Property will be conveyed to the Master Association in conformity with the Master Declaration. All Supplemental Declarations shall be approved by the Raleigh City Attorney or his deputy, if required, prior to its recordation.

Section 5. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of homeowners, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of The Properties in the jurisdiction of such Association, together with the covenants and restrictions established upon any real property, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to The Properties or any portion thereof except as specifically provided in this Declaration. No merger or consolidation shall become effective without the consent of the Raleigh City Attorney or his deputy, if required.

Section 6. Title to Sub-Association Common Area. The Declarant and Wakefield each hereby covenants, for itself, its successors and assigns that it shall convey fee simple title to the Sub-Association Common Area shown on the maps recorded in Book of Maps 2001, Pages 1730 & 1731, Wake County Registry, to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot to any other Owner, except utility, greenway and drainage easements and easements to governmental authorities. Similarly, the Declarant or Wakefield and any other person or legal entity adding Additional Property to the Declaration will, prior to the conveyance of the first Lot in such Additional Property to an Owner, convey to the Association Sub-Association Common Areas which are parts of such Additional Property as those portions are annexed in the future until all Sub-Association Common Areas, as shown on plats approved by the City of Raleigh have been conveyed to the Association.

Section 7. Conveyances of Sub-Association Common Areas. It is recognized that the maps recorded in Book of maps 2001, Pages 1730 & 1731 contain all The Properties that the Declarant intends to purchase. The Declarant will purchase the Lots in phases over time and intends to transfer the Sub-Association Common Areas associated with that particular phase at the time that an as built survey of that particular phase is recorded, which recording shall be prior to the conveyance of a Lot to an Owner other than the Declarant or Wakefield.

### ARTICLE III - MEMBERSHIP

Section 1. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to this Declaration or is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one Membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for Membership. The Board of Directors may make reasonable rules as to proof of ownership of a Lot.

Section 2. "Vacant/Leased Dwellings. Notwithstanding any other provision of this Declaration or the Bylaws, if the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any residence within The Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

Any lease or sublease of a Dwelling must be for at least six (6) months, in writing and contain the following provision:

'Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions And Restrictions For Edgewood Townhomes recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same. If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall furnish the Association a copy of any lease or sublease of his Dwelling.'

### ARTICLE IV - VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership and fractional voting shall not be permitted.

Class A. Class A Members shall be all those Owners of Lots with the exception of the Declarant or Wakefield during the Declarant Control Period as defined in Article I. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for Membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, and fractional voting shall be prohibited.

Class B. The Class B Members shall be the Declarant and Wakefield. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership by Article III, provided, that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership, but provided that the Class B Membership shall be reinstated if thereafter and before the time stated in Subparagraph (b) below, Additional Property is annexed to this Declaration as provided for in Article II, Section 2 above, and shall continue as long as the total number of Class B Member votes exceeds the total number of Class A Member votes.

(b) on December 31, 2007.

(c) Relinquishment or transfer to anyone other than Wakefield or a successor Declarant of all Special Declarant Rights as provided in Section 47F-3-104 of the PCA.

Upon the termination of Class B Membership, the Declarant and Wakefield shall become Class A Members with respect to all Lots owned by them.

Section 2. Voting Right Suspension. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and for any period during which any assessment of a Member remains unpaid according to the provisions of Article IV, Section 8 of the By-Laws.

## **ARTICLE V - PROPERTY RIGHTS**

Section 1. Members' Easements of Enjoyment. Every Member shall have a right of use and easement of enjoyment in and to the Sub-Association Common Area (including access, ingress, and egress to and from public streets and walkways) and such right of use and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the assent of Members entitled to at least 80% of the votes of the entire membership of the Association and of at least of two-thirds (2/3) or more of the votes cast by the Members of each Class of Membership present at a duly called meeting of the Association to borrow money for the purpose of improving the Sub-Association Common Area and facilities and in aid thereof to mortgage said Sub-Association Common Area unless prohibited by law, and the rights of such mortgagee in Sub-Association Common Area said shall be subordinate to the rights of the Members hereunder;

(b) The right of the Association to dedicate or transfer all or any part of the Sub-Association 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 at a duly called meeting; provided, however, that no conveyance of Sub-Association Common Area shall deprive any Member of the full use thereof. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) or more of the votes of the Class A Membership and two-thirds (2/3) of the votes of the Class B or more Membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action to be taken at said duly called meeting is sent to every Member not less than 10 days nor more than 60 days in advance.

(c) Subject to the applicable Legal Requirements of any government, the right of the Association to exchange portions of the Sub-Association Common Property for other land, provided that : (i) no such transfer shall reduce the portion of the Sub-Association Common Property that constitutes "open space" below the minimum amount of "open space" required by the City of Raleigh; (ii) the Planning Director of the City of Raleigh approves any boundary line adjustment; (iii) any boundary line adjustment is approved by the Owners of all portion of The Properties affected by the adjustment; (iv) each portion of the Properties previously Contiguous to Sub-Association Common Property (excluding easements) remains Contiguous to Sub-Association Common Property, unless otherwise approved by the Owner thereof; (v) written notice of the proposed exchanges is sent to every Member not less than twenty days and not more than sixty days in advance; (vi) the exchanged Properties and other consideration are of like value and utility; and (vii) any conveyance of real property to the Association must be free and clear of all encumbrances except for this Declaration, the Master Declaration, and any applicable Supplemental Declaration or Subdivision Declaration, greenway easements, and easements for utilities and storm water drainage. At the time of the recordation of this Declaration, the Raleigh city code requirements applicable to exchanges of Sub-Association Common Property are contained in Section 10-3073(a) (2). The real property so acquired by the Association shall be a part of the Sub-Association Common Area and the real property acquired by Declarant or a Member, without further act of the Association or Membership, shall cease to be Sub-Association Common Area and shall be subject to those provisions of the Declaration that are applicable to Lots.

The Association, without the consent of the Members, except as required by the Raleigh City Code, may exchange portions of the Sub-Association Common Property for other land for any one or more of the following purposes: (i) to eliminate unintentional encroachments of Improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust Lot boundary lines, and (iv) as otherwise determined by the Board to facilitate the orderly subdivision and development of The Properties, subject to the following: (i) no such transfer shall reduce the portion of the Sub-Association Common Property that constitutes "open space" below the minimum amount of "open space" required by the City of Raleigh; (ii) the Planning Director of the City of Raleigh approves any boundary line adjustment; (iii) any boundary line adjustment is approved by the Owners of all portions of The Properties affected by the adjustment; (iv) each portion of The Properties previously contiguous to Sub-Association Common Property (excluding easements) remains contiguous to Sub-Association Common Property, unless otherwise approved by the Owner thereof, and (v) any conveyance of real property to the

Association must be free and clear of all encumbrances except for this declaration and any applicable Supplemental Declaration or Subdivision Declaration, street rights of way or access easements, greenway easements, and easements for utilities and storm water drainage. At the time of the recordation of this declaration, the Raleigh City Code requirements applicable to exchanges of Sub-Association Common Property are contained in Section 10-3073(a)(2).

(d) The right of the Association to prohibit or regulate the parking of boats, trailers, campers, motor homes, limousines, trucks, tractors or similar personal property owned by a Member, his guests, family Members or tenants within the right of way of any public or private street in or adjacent to the Property; nor shall any of these objects be parked on the Properties except in an enclosed garage, or in areas if any designated by the Association or Master Association. Members shall keep their garage doors closed at all times excepting ingress and egress into and out of said garage. The Association shall have the right to adopt appropriate rules for the temporary parking of these items on the Properties. Excepted from these provisions are the Declarant, Wakefield, Builders, City and utility providers during their development and construction activities.

(e) The right of the Association to take such steps as are reasonably necessary to protect the Sub-Association Common Properties against foreclosure.

(f) The right of the Association to prescribe and enforce reasonable regulations governing the use and maintenance of the Sub-Association Common Property.

(g) Subject to applicable Legal Requirements of any government, the right of the Association to charge fees for use of recreational facilities located on Sub-Association Common Property.

Section 2. Delegation of Use. Any Member may delegate in accordance with the By-Laws of the Association, his right to enjoyment to the Sub-Association Common Properties and facilities to the member of his family, lessees and guests.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### Section 1. Creation of the Lien and Personal Obligation of Assessments.

Declarant, for each Lot that it owns within The Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together interest and late charges set forth in Section 8 of this Article VI and all costs of collection, including reasonable attorneys' fees, shall

be a charge on the Lot and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the obligation of the person(s) or entity owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them and except or otherwise provided in the PCA, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Any monetary fines imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Sub-Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Sub-Association Common Area; (ii) maintenance, repair and reconstruction of the Sub-Association Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2002, the Maximum Annual Assessment shall be \$1,380.00 for each Lot owned by a Class A Member.

From and after January 1, 2003, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 4, below.

Section 4. Annual Assessments; Ratification of Budgets; Certificate of Payment. Subject to the provisions of this Section, the Board of Directors may fix

the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Except as otherwise provided in this Section, the assessment established for each Lots owned by Class B members shall always be one-fourth (1/4) of the assessment for a Class A Lot. Annual assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the date that a Lot becomes a Lot in Use.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

A Class B Lot that contains a Dwelling that is occupied as a residence shall be assessed at the Class A rate. All other Class B Lots (including, without limitation, a Lot containing a Dwelling used as a model and/or sales center) shall be assessed at the Class B rate.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of

the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Sub-Association Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and shall be in the ratios provided in this Section 4 of this Article. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty (60%) percent of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting.

Section 7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event greater than eighteen percent (18%) per annum. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall

extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9.     Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for the Class A Lot in effect at the time of such sale or occupancy shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular assessment.

## **ARTICLE VII- MAINTENANCE RESPONSIBILITIES**

Section 1. Exterior Maintenance and Exclusions. In addition to maintenance of the Sub-Association Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care of roofs, gutters, downspouts, Dwellings, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

In addition to those items excluded from maintenance and repairs by the Association hereinabove described, the maintenance responsibility of the Association shall not include garage doors and all other doors of whatever nature and wherever located, windows, window screens, decks and stairs and driveways in their entirety.

(As a matter of information to future members of this Association, the Declarant wish to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform

rate of charge without regard to the actual cost of maintenance of the exterior surfaces of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

**Section 2. Fine Assessments.** The Board may impose fines against any Lot and such fines shall be treated as a Special Assessment otherwise due to the Association, and as such will be a lien against the Owner's Residential Unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (c) Third and subsequent non-compliance, or violation or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

**Section 3. Omission of Assessments.** The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

## **ARTICLE VIII - PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The Association shall have the option to require all Members to utilize the same insurance company for fire and other casualty insurance. In such event, every Member shall be responsible for payment of the deductible required under said policy of insurance.

Section 4. The Owner of any Lot may construct, reconstruct, repair, or extend a party wall in either direction (subject to and within the limitations of architectural control and other limitations of this Declaration and the Master Association) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Lots. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property owner or property owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to certify whether or not a claim of contribution exists.

Section 8. Arbitration. In the event of any dispute arising concerning party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

## **ARTICLE IX - USE RESTRICTIONS**

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the

Sub-Association Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be kept with the records of the Association which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each Lot, and the Sub-Association Common Area facilities shall be for the following uses and subject to the following restrictions and, in addition, to those set forth in the Bylaws:

(a) All Dwellings and the Sub-Association Common Area and facilities shall be used for residential and related common purposes, except that the Declarant or Wakefield may use one or more Dwellings for offices and/or models for sales purposes consistent with the Code of Ordinances of the City of Raleigh. Any Dwellings used as models shall be assessed at twenty five (25%) percent of the rate applicable to Class A Lots, as long as Dwellings are used for such purposes.

(b) No waste shall be committed on any portion of the Sub-Association Common Area and facilities.

(c) No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or of the Association, whichever shall have the obligation to maintain or repair such portions of the Property.

(d) Nothing shall be done which will impair the structural integrity of any Dwelling or other improvement, or portion of the Sub-Association Common Area and facilities or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

(e) Unless permitted by applicable Legal Requirements, no industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the Property, except that the Declarant or its agents may use any unsold Dwellings for sales or model purposes as provided herein. The purpose of this prohibition is to maintain the residential nature of the neighborhood.

(f) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard or identifying name or number upon any Dwelling or any portion of the Sub-Association Common Area and facilities, except as allowed by the Association pursuant to its Bylaws or as required by the ordinances of the City of Raleigh; provided, however, that the Declarant or Wakefield may authorize "For Sale" or "For Rent" signs the size and shape of which is commonly displayed by real estate firms in Raleigh on any Dwellings or in suitable places on the Sub-Association Common Area;

provided, however, that during the development of the Property and the marketing thereof, the Declarant or Wakefield or its agents may maintain a sales office and may erect or display such signs as the Declarant or Wakefield deems appropriate as aids to such development marketing, provided that such signs do not violate any applicable laws.

(g) No person shall undertake, cause or allow any alteration or construction in or upon any portions of the Sub-Association Common Area and facilities except at the direction or with the express written consent of the Association.

(h) The Sub-Association Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Dwellings, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon The Properties, nor shall anything be done which may be or may become a nuisance or annoyance to residents within The Properties. Development and construction activities by the Declarant or Wakefield and construction activities by Builders are permitted exceptions.

## **ARTICLE X - EASEMENTS**

Section 1. Walks, Drives, Parking Areas, and Utilities. All of The Properties, including Lots and Sub-Association Common Area, shall be subject to easements for private streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to or subsequent to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Sub-Association Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of The Properties or any part thereof.

Section 2. Easement for Government Agencies. An easement is hereby established over the Sub-Association Common Area including private streets for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water and sewer facilities, electrical, telephone, gas, cable television lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon

completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. Within such easements, no plantings of shrubs and trees or the erection of structures, including fences, shall be allowed except as approved by the Board.

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

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

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

## **ARTICLE XI - RIGHTS OF INSTITUTIONAL LENDERS**

### **Section 1. Rights Reserved to Institutional Lenders.**

"Institutional Lender" or "Institutional Lenders" as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies and other mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Lot such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by an independent Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses.

(b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association during normal business hours.

(e) To be given notice by the Association of any substantial damage to any part of the Sub-Association Common Area.

(f) To be given notice by the Association if any portion of the Sub-Association Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

## **ARTICLE XII- RIGHTS OF WAKEFIELD**

The provisions of the this Article apply to all portions of The Properties owned by Wakefield. If there is any conflict between the provisions of this Article and any other provisions of this Declaration, the provisions of this Article shall control.

Section 1. During the Declarant Control Period, neither Wakefield nor the Lots owned by Wakefield shall be subject to assessments (particularly including, without limitation, any annual assessments or special assessments) that otherwise are due and

payable from the Declarant or the Owner of a Lot under this Declaration, except for the following:

- (a) If Wakefield becomes the successor Declarant to the Declarant (which may only occur with the written consent of such party), then such party shall be liable for payment of all assessments or other financial obligations, if any, of the Declarant under this Declaration; and
- (b) Wakefield shall be subject to the payment of assessments for each Lot in Use it owns, in the same manner as any other Owner of a Lot in Use under this Declaration.

Section 2. Whether or not specifically stated herein, Wakefield (or its assigns) shall exclusively shall have all the rights of the Declarant under this Declaration with respect to each Lot it owns, until such time as Wakefield or a Builder (other than The New Fortis Homes) to whom Wakefield (or it assigns) conveys the Lot and no longer owns the Lot.

The foregoing provisions are enforceable by Wakefield or its assigns through all remedies at law and in equity, and may not be amended, modified or terminated without the written consent of Wakefield.

### ARTICLE XIII - GENERAL PROVISIONS

Section 1. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets within The Properties. If it is necessary for "no parking" signs to be erected in order to accomplish this, this shall be done at the expense of the Association as a Sub-Association Common Expense.

The Association shall maintain the private streets in The Properties as part of Sub-Association Common Expense. Each Owner shall maintain whatever driveways are located on such Owners Lot as part of the maintenance of the Lot.

In no case shall the municipality or other agency which provides emergency or regular fire, police or other public service for The Properties, be responsible for failing to provide any such service to The Properties or any of its occupants when such failure is due to the lack of access to such areas or any other factor within the control of the Declarant, Wakefield, Association, or occupants.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Insurance. The Board of Directors shall procure and maintain adequate liability and hazard insurance on Sub-Association Common Area owned by the Association, and also Directors and Officers fidelity coverage. Liability insurance shall be procured and maintained in the minimum amount of \$1,000,000.00.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 5. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association as applicable; Annexation of Additional Property, mergers or consolidations, mortgaging of Sub-Association Common Properties, dedication of Sub-Association Common Properties, dissolution of the Association and amendment of this Declaration. Notwithstanding any provision in this instrument to the contrary, as long as there is a Class B Membership, and if Declarant desires to qualify sections of this subdivision for Federal Housing Administration, Veterans Administration, Fannie Mae or other similar agencies (but not otherwise), the following actions will require the prior approval of Federal Housing Administration, Veterans Administration, Fannie Mae or other similar agencies: Annexation of additional properties, dedication of Sub-Association Common Areas, exchange of Sub-Association Common Area for other portions of the Properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that the Board of Directors may amend this declaration, without the consent of the Owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation. The Declarant, during the Declarant Control Period may amend the Declaration to correct typographical errors.

Section 7. If any amendment to these covenants, conditions and restrictions is executed, each amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

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

(c) 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.

Section 8. Plat Re-recording and Boundary Revisions. Except as otherwise provided in the second paragraph of this Section, a Lot may be subdivided, and the boundaries of a Lot may be altered, only with the written consent of Declarant and the Owner thereof during the Development Period, and, thereafter, the written consent of the Board and the Owner thereof, and with any prior approval required of Institutional Lenders and the City of Raleigh. Provided, however, and notwithstanding the foregoing sentence, such consent is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, Wakefield, the Association, the City or a public utility provider.

Declarant or Wakefield each reserve the right, at any time and from time to time, in its sole discretion and without the consent or approval of any other Owner, the Association, or other person or legal entity (but subject to applicable Legal Requirements), to record or re-record a plat of any portion of The Properties it owns for any one or more of the following purposes: (i) to revise boundary lines between Lots or between Lots and proposed Sub-Association Common Area; (ii) to reduce or increase the number of Lots that currently are shown on the plat recorded in the Wake County, North Carolina Registry in Book of Maps 2001, Pages 1730 and 1731; (iii) to record a plat that reflects the location of Lot boundary lines after Dwellings have been constructed on Lots (it being contemplated that Lot boundary lines may need to be adjusted following completion of construction of Dwellings); or (iv) to eliminate any inconsistency between a plat and this Declaration or any Supplemental Declaration.

#### **CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEWOOD TOWNHOMES**

By authority of its Board of Directors the undersigned officers of Edgewood Townhomes Association, Inc. hereby certifies that the foregoing instrument has been executed by the owners of \_\_\_\_\_ percent of the Lots of Edgewood and is, therefore, a valid amendment to the existing Declaration of Covenants, Conditions and Restrictions Edgewood Townhomes.

**EDGEWOOD TOWNHOMES ASSOCIATION, INC.**

BY: \_\_\_\_\_  
PRESIDENT

(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 recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of this 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 Lots in The Properties.

Notwithstanding the foregoing, no amendment shall be effective unless approved by the Raleigh City Attorney or his or her deputy; if required provided, however, that if any amendment is submitted to said City Attorney, if required and is neither approved or disapproved within thirty (30) days from the date of submission, it shall be conclusively presumed that the City Attorney has approved it.

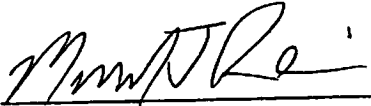
Section 8. Amendment of Declaration without approval of Owners. The Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over The Properties or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale of such lots and improvements, or mortgage interest therein, as well as any other law or regulation relating to the control of the Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation, or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

No amendment made pursuant to this Section shall be effective until approved by the Raleigh City Attorney or his or her deputy, if required, and duly recorded in the Register of Deeds of Wake County.

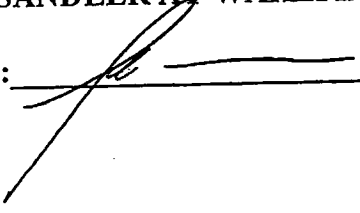
Section 9. Amendment to Achieve Tax-Exempt Status. The Declarant, during the Declarant Control Period, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or The Properties, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

IN WITNESS WHEREOF, each person who is executing this instrument in an individual capacity has adopted the word "SEAL" beside his or signature below as his or her seal for the execution hereof, each corporate party who is executing this instrument has caused this instrument to be signed in its corporate name by its duly authorized officers and its corporate seal to be affixed hereto, all by authority of its Board of Directors duly given, each limited liability company party who is executing this Declaration has adopted the word "SEAL" appearing beside its name below as its seal for the execution of this Declaration, and has caused this Declaration to be executed in its company name by its duly authorized manager or general manager, and each general or limited partnership party who is executing this instrument has adopted the word "SEAL" appearing beside its name below as its seal for the execution of this Declaration, and has caused this Declaration to be executed in its partnership name by its duly authorized general partner or managing general partner, on the dates indicated in the respective acknowledgements of such signatures, the last date of which shall be the date of execution of this Declaration.

**THE NEW FORTIS CORPORATION**

BY:  (SEAL)  
AREA President

**SANDLER AT WAKEFIELD, L.L.C.**

BY:  (SEAL)

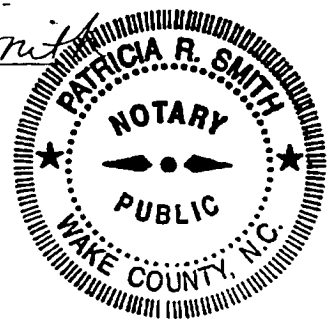
STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Patricia R Smith, a Notary Public of the County and State aforesaid, do certify that Mike Reiser personally appeared before me this day and acknowledged that he/~~she~~ is <sup>Area</sup> President of The New Fortis Corp., and that he/~~she~~ as <sup>Area</sup> President being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial stamp or seal, this 6 day of Dec., 2001.

Patricia R Smith  
NOTARY PUBLIC



My Commission Expires: 1-23-2006

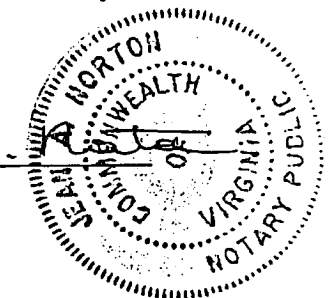
STATE OF VIRGINIA

COUNTY/CITY OF Virginia Beach

I, Jean A. Norton, a Notary Public of the County and State aforesaid, do hereby certify that Nathan D. Benson, Manager of Sandler at Wakefield, L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 3 day of DEC., 2001.

Jean A. Norton  
Notary Public



My commission Expires My Commission Expires November 30, 2004

## **EXHIBIT A**

Being all of Lots 6 through 19 inclusive and Lots 30 through 49 inclusive, all as shown on plat thereof entitled "Edgewood Subdivision, Phase 2" recorded in Book of Maps 2001, Page 1730 and 1731, Wake County Registry.

## **EXHIBIT A-1**

Being all of that parcel of Land designated as "Edgewood Subdivision, Ph. 2" consisting of 13.98 acres as shown on plat thereof recorded in Book of Maps 2001, Page 1730 and 1731, Wake County Registry, same and except Lots 6 through 19 inclusive and Lots 30 through 49 inclusive, all as shown on the aforementioned plat recorded in Book of Maps 2001, Pages 1730 and 1731, Wake County Registry.