

May 27 1999

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DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THE ENCLAVE AT
FORESTVILLE FARMS
SUBDIVISION

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DECLARATION OF PROTECTIVE COVENANTS
FOR
THE ENCLAVE AT FORESTVILLE FARMS

THIS DECLARATION is made on the day set forth on the signature page hereof by Forestville Estates LLC a North Carolina limited liability company (Declarant)

WITNESSETH

WHEREAS Declarant pursuant to that certain deed recorded at ^{Deed Book 7242 Page 28 and} ~~Deed Book 7818~~, Page 733 Wake County Registry is the owner of the real property described in Exhibit A and

WHEREAS Declarant desires to subject the real property described in Exhibit A and possibly other property to the provisions of this Declaration to create a residential community of single family housing

NOW THEREFORE Declarant hereby declares that all the real property described in Exhibit A of this Declaration including any improvements which may be (but are not required to be) constructed on that property is subjected to the provisions of this Declaration Such real property shall be held sold transferred conveyed used occupied and mortgaged or otherwise encumbered subject to the covenants conditions restrictions easements charges assessments and liens contained in this Declaration The provisions of this Declaration shall run with the title to the property subjected to this Declaration This Declaration shall be binding on all persons having any right title or interest in all or any portion of the property now or hereafter made subject hereto their respective heirs legal representatives successors successors in title and assigns and shall inure to the benefit of each and every owner of all or any portion thereof

1 Definitions

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings

- a Area of Common Responsibility shall mean the Common Property together with such other areas if any for which the Association has responsibility pursuant to this Declaration any recorded plat other covenants contracts or agreements
- b Association shall mean The Enclave at Forestville Farms Homeowner s Association Inc a North Carolina nonprofit corporation its successors and assigns
- c Board of Directors or Board of the Association shall be the appointed or elected body as applicable having its normal meaning under North Carolina law
- d Bylaws shall refer to the Bylaws of the Association attached as Exhibit C
- e Common Expenses shall mean the expenses of administration operation utilities insurance maintenance repair or replacement of the Common Property and their improvements including the payment of taxes and public assessments expenses set forth in this Declaration and Bylaws as Common Expenses or Association responsibility and all actual or estimated expenses of the

Association which are incurred for the general benefit of all Owners including reserves as the Board may find necessary and appropriate pursuant to this Declaration Bylaws and the articles of incorporation

- f Common Property shall mean if any the real property interests in real property and personal property easements and other interests together with improvements located on that property (if any) which are now or are hereafter owned by the Association for the common use and enjoyment of all of the Owners Common Property shall include without limitation open space common areas water lines that serve more than one lot and that are located outside any public street right of way sewer lines (including lift stations and force mains) that serve more than one Lot which are located outside any public street right of way or City of Raleigh sanitary sewer easement storm drainage facilities and easements not maintained by any governmental entity
- g Community shall mean the real property and interests described in Exhibit A and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration
- h Community Wide Standard shall mean the standard of conduct maintenance or other activity generally prevailing in the Community Such standard may be more specifically determined by the Board of Directors of the Association Such determination must be consistent with the Community Wide Standard originally established by the Declarant
- i Declarant' shall mean that person or entity executing this Declaration as Declarant The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a deed filed in the real property records of the Clerk of the Superior Court in the county where the Community is located
- j Declaration shall include this Declaration of Protective Covenants for The Enclave at Forestville Farms Subdivision and any Supplemental Declaration thereto
- k Lot shall mean any plot of land within the Community whether or not improvements are constructed on that land which constitutes or will constitute after the construction of improvements a single family dwelling site as shown on a plat recorded in the land records of the county where the Community is located
- l Mortgage means any mortgage security deed deed of trust or similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation
- m Mortgagee shall mean the holder of a Mortgage
- n Occupant shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time regardless of whether such Person is a tenant of the Owner of such property
- o Owner shall mean the record owner whether one or more Persons of the fee simple title to any Lot located within the Community excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation The ownership of each Lot shall include and there shall pass with each Lot as an appurtenance thereto whether or not separately described all of the right title and interest of an Owner in the Common Property and membership in the Association

- p Person means a natural person corporation limited liability company joint venture partnership (general or limited) association trust or other legal entity
- q Supplementary Declaration means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on the land described therein or both
- r Total Association Vote means all of the votes attributable to members of the Association If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved

2 Property Subject To This Declaration

- a Property Subjected To This Declaration The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit A
- b Other Property Only the real property described in Section 2(a) is made subject to this Declaration However Declarant may in accordance with paragraph 9(a) subject all or portions of the additional real property described in Exhibit B by recording one or more Supplementary Declarations The membership may add property to this Declaration in accordance with Section 9(b)

3 Association Membership and Voting Rights

- a Membership Every Owner shall be deemed to have a membership in the Association If a Lot is owned by more than one Person there shall be only one (1) membership per Lot and the votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws Membership shall be appurtenant to and may not be separated from ownership of any Lot The rights and privileges of membership including the right to vote and to hold office may be exercised by a Member or the Member's spouse but in no event shall more than one (1) vote be cast nor office held for each Lot owned
- b Voting Members shall be entitled to one (1) vote for each Lot owned When more than one (1) Person holds an ownership interest in any Lot the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting but fractional voting shall not be allowed The Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it

4 Assessments

- a Purpose of Assessment The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation health safety welfare common benefit and enjoyment of the Owners and Occupants of Lots as may be authorized from time to time by the Board Assessments shall be used to pay the Common Expenses
- b Creation of the Lien and Personal Obligation for Assessments Each Owner agrees to timely pay to the Association (a) annual assessments or charges (b) special assessments and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration Each Owner also agrees to pay late charges interest charges and reasonable fines as may be imposed in accordance with the terms of this Declaration

- c Late Charges All assessments shall accrue late charges interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (12%) per annum on the principal amount due) costs including without limitation reasonable attorney's fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due.
- d Personal Liability Each Owner shall be personally liable for the portion of each assessment coming due while the owner of a Lot and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance provided however the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.
- e Certificate of Payment The Association shall within ten (10) business days after receiving a written request furnish a certificate signed by an officer of the Association setting forth whether the assessments other charges and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association the Board and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.
- f Annual Assessments The initial maximum annual assessment for 1999 shall be \$ 150 00. The maximum annual assessment for 2000 shall be \$ 200 00. Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid through periodic payments and the Board shall have the right to accelerate any unpaid annual installments in the event an Owner is delinquent. Unless otherwise provided by the Board the assessment shall be paid in annual installments.
- g Computation of Annual Assessments The Board shall prepare a proposed budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve. The Board may increase the Annual Assessment up to 10% from the previous Annual Assessment without the consent of the Owners. If the Board increases the Annual Assessment more than 10% the Board shall set a date for a meeting of the Owners to consider ratification of the budget such meeting to be held not less than ten (10) nor more than thirty (30) days after the mailing of the notice. The Board shall cause the proposed budget the assessments and a notice of the meeting to consider ratification of the budget including a statement that the budget may be ratified without a quorum to be mailed or delivered to each Member at least thirty (30) days prior to the end of the current fiscal year. Quorum need not be present at the meeting. The budget and the assessment shall become effective unless disapproved at such meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget or the Board fails to establish a budget for the succeeding year the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed the Board shall have the right to make a new budget retroactive to the start of the fiscal year.
- h Special Assessments In addition to the other assessments authorized by this Declaration the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

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- 1 Lien for Assessment All sums assessed against any Lot Owner or Member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association
- j Priority The lien of the Association shall be superior to all other liens and encumbrances on such Lot except for (a) liens for ad valorem taxes and public assessments and public nuisance liens or (b) liens for all sums unpaid on a first priority Mortgage or Deed to Secure Debt All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future
- k Effect of Nonpayment of Assessment Any assessments (or installments) which are not paid when due shall be delinquent Any assessment (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board If the Assessment is not paid within thirty (30) days a lien shall attach upon filing a claim of lien in the Office of the Clerk of the Superior Court of the county in which the Lot is located The lien shall set forth the name and address of the Association the name of the Owner of the Lot a description of the Lot and cover all assessments then due or which come due until the lien is canceled of record and any other amounts provided in this Declaration or permitted by law In the event that the assessment remains unpaid after thirty (30) days the Association may institute suit to collect such amounts and foreclose its lien The Association shall have the right to foreclose its lien by any method allowed by law The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire hold lease mortgage or convey the same
- l No Setoff or Deduction No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration No setoff diminution or abatement of any assessment shall be claimed or allowed by reason of any abandonment of the Lot non use of the Common Property or alleged failure of the Association to take some action for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff
- m Application of Payments All payments shall be applied first to costs then to late charges then to interest and then to delinquent assessments
- n Date of Commencement of Assessments Assessments shall start on the first day of the month following the sale of the Lot to a Person The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year
- o Specific Assessment The Board shall have the power to specifically assess (which shall not be used in lieu of general assessments for Common Expenses) pursuant to this Section as it shall deem appropriate in its sole discretion Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future The Board may also specifically assess Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association on the Area of Common Responsibility)
 - 1 Expenses for services provided by the Association which benefit less than all of the Lots

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may be specifically assessed equitably among all of the Lots which are benefited according to the benefit and

- 11 Expenses of the Association which benefit all Lots but which do not provide an equal benefit to all Lots may be assessed equitably among all Lots according to the benefit received
- p Budget Deficits During Declarant Control For so long as the Declarant has the authority to appoint the directors and officers of the Association Declarant may (but shall not be required to)
 - 1 Advance funds to the Association sufficient to satisfy the deficit if any between the actual operating expenses of the Association and the sum of the annual special and specific assessments collected by the Association in any fiscal year Interest charged for such advance shall be at the prevailing rate in the local area of the Community Such advances shall upon request of Declarant be evidenced by promissory notes from the Association in favor of the Declarant The failure of Declarant to obtain a promissory note shall not invalidate the debt and the promissory note shall be at the prevailing rate or
 - 11 Cause the Association to borrow such amount or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community Declarant in its sole discretion may guarantee repayment of such loan if required by the lending institution but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan or

5 Maintenance & Conveyance of Common Property to Association

- a Associations Responsibility The Association shall maintain in good repair the Common Property including (without limitation) maintenance repair and replacement of all landscaping and improvements situated on the Common Property The Association shall also maintain all lakes and associated dams in or about the Subdivision or any lot thereon to the extent maintenance of such lake is required and the lake is not otherwise maintained by a governmental entity or third party
 - 1 The Association shall also maintain all entry features and Common Property operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community including the expenses for water and electricity if any provided to all such entry features all storm water detention facilities and drainage easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity) and all property outside of Lots located within the Community which was originally maintained by Declarant
 - 11 Additionally the Association shall contribute the Community's pro rata share for the maintenance of the private sewer lift stations and force mains serving the Community and neighboring properties as described on a plat recorded in the Office of the Register of Deeds for Wake County North Carolina (Sewer Lift Station) Maintenance of the Sewer Lift Station may include but is not limited to the costs of rent repairs electricity equipment replacement and additions labor management inspections and supervision

taxes and the procurement and maintenance of casualty and liability insurance for the Sewer Lift Station. Each Owner shall be assessed for such costs as a Common Expense of the Association. Each Owner shall have a right and easement of enjoyment in and to the Sewer Lift Station which easement shall be appurtenant to and shall pass with the title to every Lot until such time as the City of Raleigh shall determine that the Sewer Lift Station must be abandoned (Date of Abandonment) and gravity sewer service is provided to each Lot at which time such easement shall be terminated. After the Date of Abandonment the Association shall have no obligation to contribute to the maintenance of the Sewer Lift Station. Declarant and its heirs successors and assigns shall retain sole ownership in perpetuity of the Sewer Lift Station located upon and serving the Community. Declarant may convey to any property owner an easement and/or license for the use and enjoyment of the Sewer Lift Station provided however that said additional use shall (i) be approved by the City of Raleigh and (ii) such additional users shall pay to the Association not less than their proportionate share of any maintenance costs for the Sewer Lift Station as described above.

- iii The Association shall have the right but not the obligation to maintain other property not owned by the Association within the Community where the Board has determined that such maintenance would benefit the Owners.
- iv In the event that the Association determines that the need for maintenance repair or replacement of property described in (i) or (ii) above is caused through the willful or negligent act of an Owner or the family guests lessees contractors or invitees of any Owner and is not covered or paid for by insurance in whole or in part then the Association may perform such maintenance repair or replacement at such Owner's sole cost and expense and all costs thereof shall be an Assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration. Such Owner may request a hearing by the Board of Directors or an adjudicatory panel appointed by the Board to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small claims under North Carolina law. The hearing shall afford notice of the charge to the Owner an opportunity for the Owner to be heard and to present evidence and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.
- v The maintenance shall be performed consistent with the Community Wide Standard.
- b Owner's Responsibility Except as provided in (a) above all maintenance of the Lot and all structures parking areas landscaping and other improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain such Lot in a manner consistent with the Community Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance repair or replacement of items for which such Owner is responsible the Association may perform such maintenance repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance repair or replacement. The notice shall set forth with reasonable particularity the maintenance repairs or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance repair or replacement or in the event that such maintenance repair or replacement is not capable of completion within a ten (10) day period to commence

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such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof the Association may provide any such maintenance repair or replacement at such Owner's sole cost and expense and all costs shall be an assessment.

- c. Conveyance of Common Property by Declarant to Association The Declarant may convey to the Association any personal property any improved or unimproved real property leasehold easement or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section or otherwise required by governmental authority. Declarant shall convey to the Association all property designated as Common Property on a recorded final plat (prior to the conveyance of the first Lot) and such conveyance shall be made free and clear of all liens and encumbrances except utilities greenway and drainage easements.

6 Use Restrictions and Rules

- a. General This Section sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration. In addition the Board may from time to time without consent of the Members promulgate modify or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled canceled or modified in a regular or special meeting by a majority of the Total Association Vote.
- b. Residential Use All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Board. Leasing of a Lot shall not be considered a business or business activity. However the Board may permit a Lot to be used for business purposes so long as such business in the sole discretion of the Board does not otherwise violate the provisions of the Declaration or Bylaws does not create a disturbance and does not unduly increase traffic flow or parking congestion. The Board may issue rules regarding permitted business activities. The Declarant shall have the right to operate a sales office and a construction office from one or more Lots within the Community.
- c. Architectural Standards No exterior construction alteration addition or erection of any nature whatsoever shall be commenced or placed upon any part of the Community except such as is installed by the Declarant or as is approved in accordance with this Section or as is otherwise expressly permitted herein. Except as provided above no exterior construction addition erection or alteration shall be made unless and until plans and specifications showing at least the nature kind shape height color materials and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.
 - 1. The Architectural Review Committee may be established such that it is divided into two (2) subcommittees with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.
 - 11. The Board may employ architects engineers or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

- iii The Architectural Review Committee may from time to time delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons which shall have full authority to act on behalf of the committee for all matters delegated
- iv Written design guidelines and procedures shall be promulgated for the exercise of this review which guidelines may provide for a review fee
- v So long as the Declarant owns any property for development and sale in the ordinary course of business in the Community the Declarant shall have the right to appoint all members of the Architectural Review Committee Upon the expiration or earlier surrender in writing of such right the Board shall appoint the members of the Architectural Review Committee
- vi If the Architectural Review Committee fails to approve or to disapprove completed submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it approval will not be required and this Section will be deemed to have been fully complied with As a condition of approval under this section each Owner on behalf of such Owner and such Owner's successors in interest shall assume all responsibilities for maintenance repair replacement and insurance to and on any change modification addition or alteration In the discretion of the Architectural Review Committee an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors in interest The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason including purely aesthetic considerations and it shall be entitled to stop any construction in violation of these restrictions Any member of the Board or its representatives shall have the right during reasonable hours and after reasonable notice to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry In addition to any other remedies available to the Association in the event of noncompliance with this Section the Board may as provided in this Declaration record in the appropriate land records a notice of violation naming the violating Owner
- vii **Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications Neither Declarant the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors members, employees, and agents of any of them to recover any damages and hereby releases remises, quitclaims, and covenants not to sue for all claims, demands, and causes of**

action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given

- VIII Signs Except for dwelling unit identification numbers no sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing the Board and the Declarant shall have the right to erect reasonable and appropriate signs 'For Sale' and 'For Rent' signs and security signs consistent with the Community Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof
- IX Vehicles The term vehicles as used herein shall include without limitation motor homes boats trailers motorcycles minibikes scooters go carts trucks campers buses vans and automobiles. Parking vehicles on the street is prohibited. Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of parking areas serving their Lot all vehicles shall be parked within such parking areas. Where the Lot contains a garage parking areas shall refer to the number of garage parking spaces. Passenger vehicles and visitors vehicles may park in the driveway serving the Lot. All single family detached homes shall contain a garage carports shall not be permitted. Garage doors shall be kept closed at all times except during times of ingress and egress from the garage
- (1) No vehicle boat motor home trailer or recreational vehicle or trailer of an Owner or Occupant may be left upon any portion of the Community for a period longer than five (5) days unless it is stored in a garage or stored in another area designated or approved by the Board. Vehicles boats motor homes trailers or recreational vehicles which are either unlicensed or inoperable for a period of five (5) days or more may not be stored upon any portion of the Community at any time unless fully enclosed in a garage
 - (2) No unlicensed vehicle of an Owner or Occupant shall be left upon any portion of the Community except in a garage or other area designated by the Board
 - (3) Such vehicles identified in (1) and (2) above must be removed by the Owner. The Association shall have the right to remove any such vehicle if not removed by the Owner within ten (10) days of notice and the costs of such removal shall be an assessment against such Owner
 - (4) Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal
- x Off Road No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board

- x1 Leasing Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant, his family members, and guests to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the owner and specifically assess all costs associated therewith against the Owner and the Owner's property.
- x11 Occupants Bound All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.
- x111 Animals and Pets No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall be kept on a leash when outside of an owner's residence. No pet which has caused any damage or injury shall be walked in the community, whether on a leash or otherwise. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants must be removed by their owner upon request of the Board.
- x1v Nuisance It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person.
- xv Unsightly or Unkempt Conditions The pursuit of hobbies or other activities, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause overcrowded, disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.
- xvi Antennas No exterior antennas of any kind, including without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Review Committee. Satellite Dishes which are dark grey or black in color and are 18 inches or less in diameter shall be allowed, provided they are not visible from the street, installed upon or adjacent to a residence, and are integrated with the surrounding landscape.
- xvii Tree Removal No trees that are more than four (4) inches in diameter (12 5/6 inches in

circumference) as measured at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including without limitation dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee. Notwithstanding all of the above, no consent or approval is required for the removal of any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence, a driveway, or the line formed by the highest normal pool elevation of any lake.

- xviii Drainage Catch basins and drainage easements are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains; the right to alter same being expressly reserved to Declarant so long as Declarant owns property described on Exhibit B, then to the Association.
- xix Sight Distance at Intersections All property located at street and driveway intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.
- xx Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a burn pit during development and construction of the Community.
- xxi Subdivision of Lot No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and Common Property in the Community are laid out.
- xxii Guns The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, BB guns, pellet guns, and small firearms of all types.
- xxiii Fences No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Lot closer to the street than the rear one third (1/3) of the dwelling located on the Lot. (Generally, only shadow box style privacy fencing constructed of six (6) foot maximum height, dog eared, unpainted cedar, or four (4) foot maximum height, rough sawn, open board, or split rail, unpainted cedar fencing shall be approved by the Architectural Review Committee.) Notwithstanding the foregoing, the Declarant shall

have the right to erect fencing of any type at any location on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Property.

- xxiv Utility Lines No overhead utility lines including lines for cable television shall be permitted within the Community except for temporary lines as required during construction and lines installed by or at the request of Declarant.
- xxv Air Conditioning Units No window air conditioning units may be installed.
- xxvi Lighting Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot, (b) One (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community, (d) seasonal decorative lights, or (e) front house illumination of model homes. Other lighting on a Lot shall be directed away from adjacent Lots and shall not be permitted if such constitutes an unreasonable annoyance to other Owners in the Community.
- xxvii Artificial Vegetation, Exterior Sculpture, and Similar Items No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.
- xxviii Energy Conservation Equipment No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure as determined in the sole discretion of the Architectural Review Committee.
- xxix Swimming Pools and Hot Tubs No swimming pool shall be constructed, erected, or maintained upon any Lot. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.
- xxx Gardens and Play Equipment No vegetable garden or play equipment (including without limitation, basketball goals) shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Without limiting the foregoing, basketball goals may be installed providing they are constructed of black poles permanently mounted, not visible from the street, and the Architectural Review Committee approves the location, height, and type of goal and post.
- xxxi Mailboxes All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.
- xxxii Exteriors Any change to the exterior color of any improvement located on a Lot, including without limitation, the dwelling, must be approved by the Architectural Review Committee.
- xxxiii Clothesline No exterior clotheslines of any type shall be permitted upon any Lot.

- xxxiv Exterior Security Devices No exterior security devices including without limitation window bars shall be permitted on any residence or Lot Signs less than 6' by 6' placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device
- xxxv Entry Features Owners shall not alter remove or add improvements to any entry features constructed by the Declarant or the Association on any Lot or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee
- xxxvi Storage Sheds and Garages Construction installation or placement of a storage shed tree house play house detached garage or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee in its sole discretion All plans (which must include the length width height materials colors and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction The structure must be constructed installed or placed in a location inconspicuous as much as possible from public view No two story structures of this nature are permitted on any Lot within the Community All materials used in the construction of such buildings must match the main dwelling located on the Lot

Owners shall have no riparian rights with respect to the waters in any lake or stream within the Community and shall not be permitted to withdraw water from any lake or stream as may exist in the Community or as are made available for the use of all Owners and Occupants within the Community without the prior written consent of the Board or its designee As long as the Declarant has the right unilaterally to subject property to this Declaration or owns any property in the Community for development and/or sale Declarant may authorize and grant easements to withdraw water from such lakes or streams without the consent of the Association

Notwithstanding anything contained in this Declaration to the contrary no vegetable gardens hammocks statuary swing sets or similar play equipment basketball goals or similar athletic equipment boats or boating equipment pools fences clothes drying equipment dog houses dog runs or other pet enclosures signs retaining walls or any other structure or thing which in the sole discretion of the Board or its designee tends to detract from the appearance of the Community and especially any lake shall be permitted on any Lot which abuts or is appurtenant to any lake within the Community or any lake made available for the use of all Owners and Occupants within the Community without the prior written consent of the Architecture Review Committee or its designee

7 Insurance and Casualty Losses

- a Insurance on Common Property The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain This insurance shall provide at a minimum fire and extended coverage including vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard Alternatively the Board may purchase all risk coverage in like amounts
- b Liability Insurance The Board shall obtain a general commercial liability policy applicable to

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the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents and if reasonably available directors and officers liability insurance The public liability policy shall have a combined single limit of at least One Million Dollars (\$1 000 000 00) If available the Board is authorized to obtain directors and officers liability insurance coverage

- c Declarant The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant
- d Premiums Premiums for all insurance shall be common expenses of the Association The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost
- e Miscellaneous All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties as further identified below Such insurance shall comply with these provisions
 - 1 All policies shall be written with a company authorized to do business in North Carolina
 - 11 Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors provided however no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations if any related thereto
 - 111 In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners Occupants or their Mortgagees and the insurance carried by the Association shall be primary
 - 1v All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually
 - v The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following
 - (1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors its manager the Owners and their respective tenants servants agents and guests
 - (2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash
 - (3) That no policy may be canceled invalidated or suspended on account of any one or more individual Owners
 - (4) That no policy may be canceled subjected to nonrenewal invalidated or suspended on account of any defect or the conduct of any director officer or employee of the Association or its duly authorized manager without prior

demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association its manager any Owner or Mortgagee

- (5) That any other insurance clause in any policy exclude individual Owners policies from consideration and
- (6) That no policy may be canceled subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association

vi In addition to the other insurance required by this Section the Board shall obtain workers compensation insurance if and to the extent necessary to satisfy the requirements of applicable laws and a fidelity bond or bonds on directors officers employees and other persons handling or responsible for the Association's funds if reasonably available. If obtained the amount of fidelity coverage shall be determined in the three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled subjected to nonrenewal or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements steam boiler coverage and flood insurance if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation the Federal National Mortgage Association and the U S Department of Veterans Affairs or the U S Department of Housing and Urban Development

f Individual Insurance By virtue of taking title to a Lot subject to the terms of this Declaration each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all risk policy if reasonably available including vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all risk coverage is not reasonably available Owners shall obtain at a minimum fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right but not the obligation at the expense of the Owner to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association acquires insurance on behalf of any Owner the cost thereof shall be assessed against the Owner and the Lot as a specific assessment

g Damage and Destruction Insured by Association

- 1 In General Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used in this Section means repairing or restoring the

property to substantially the same condition and location that existed prior to the fire or other casualty allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

- 11 Repair and Reconstruction Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless within sixty (60) days after the casualty at least seventy five percent (75%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction or both are not made available to the Association within such period then the period shall be extended until such information shall be made available provided however such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.
 - 111 If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof the Board shall in accordance with Section 4 h shall levy a Special Assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed such excess shall be deposited to the benefit of the Association.
 - 1v In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.
- h Damage and Destruction Insured by Owners The damage or destruction by fire or other casualty to all or any portion of any improvement on a lot shall be repaired by the Owner thereof within seventy five (75) days after such damage or destruction or where repairs cannot be completed within seventy five (75) days they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy five (75) days after such damage or destruction.
- 1 Insurance Deductible The deductible for any casualty insurance policy carried by the Association shall in the event of damage or destruction be allocated among the Persons who are responsible hereunder or under any declaration or contract requiring the Association to obtain such insurance for maintenance of the damaged or destroyed property.
 - 8 Condemnation In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed then unless within sixty (60) days after such taking at least seventy five percent (75%) of the Total Association Vote shall otherwise agree the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of this Declaration applicable to Common Property improvements damage shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

9 Annexation of Additional Propertya Unilateral Annexation By Declarant

1 The Declarant shall have the unilateral right privilege and option from time to time until five (5) years after the recording of this Declaration to subject to the provisions of this Declaration the following property (Annexation)

- (1) All or any portion of the real property described in Exhibit B
- (2) Any property which is adjacent to the property described in Exhibit A and
- (3) Annexation may be accomplished by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected No Supplemental Declaration shall be Recorded without the prior approval of the Raleigh City Attorney or his Deputy
- (4) Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein
- (5) Declarant shall have the right in connection with the annexation of other property to modify the terms of this Declaration as it may apply to the annexed property provided that such modification shall be consistent with the general scheme of development for the Community

11 Except as otherwise required by the Raleigh City Code the rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association If such additional land is not subjected to this Declaration Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof whether such uses are consistent with the covenants and restrictions imposed hereby or not

b Other Annexation Subject to the consent of the owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property in the Community) upon the affirmative vote or written consent or any combination thereof of the Owners of at least two thirds (2/3) of the Lots at a duly called meeting the Association may permit other contiguous real property to be annexed to the provisions of this Declaration describing the property Annexation shall be by a Supplementary Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration unless a later effective date is provided therein The Supplementary Declaration shall not be recorded without the prior approval of the Raleigh City Attorney or his deputy

c Prior to the conveyance of the first Lot of newly annexed additional real property the Owner shall convey all Common Property to the Association free and clear of any encumbrances and liens except utility greenway and drainage easements

d The maximum acreage of the Community shall be 42 The maximum residential density shall be

7 dwelling units per acre The total maximum number of dwelling units in the future development shall not exceed 149

10 Mortgagee Provisions The following provisions are for the benefit of holders of first Mortgages on Lots in the Community The provisions of this Section apply to both this Declaration and the Bylaws notwithstanding any other provisions contained therein

- a Notices of Action An institutional holder insurer or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder insurer or guarantor and the Lot number therefore becoming an eligible holder) will be entitled to timely written notice of
 - 1 Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held insured or guaranteed by such eligible holder
 - 11 Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days provided however notwithstanding this provision any holder of a first Mortgage upon request is entitled to written notice from the Association of any default in the performance by the owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days
 - 111 Any lapse cancellation or material modification of any insurance policy maintained by the Association
- b No Priority No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property
- c Notice to Association Upon request each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot
- d VA/HUD Approval As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U S Department of Housing and Urban Development (HUD) or the U S Department of Veterans Affairs (VA) for insuring or guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA or HUD as applicable annexation of additional property to the Community except for annexation by Declarant in accordance pursuant to a plan of annexation previously approved by the VA or HUD as applicable dedication of Common Property to any public entity mergers and consolidations dissolution of the Association and material amendment of the Declaration Bylaws or Articles of Incorporation
- e Applicability of Section Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration Bylaws or North Carolina law for any of the acts set out in this Section
- f Amendments by Board Should the Federal National Mortgage Association the Federal Home Loan Mortgage Corporation HUD or VA subsequently delete any of their respective

requirements which necessitate the provisions of this Section or make any such requirements less stringent the Board without approval of the Owners may cause an amendment to this Section to be recorded to reflect such changes

11 Easements

a Easements for Encroachment and Overhang There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots as the case may be along a line perpendicular to such boundary at such point In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner Occupant or the Association

b Easements for Use and Enjoyment

1 Every Owner of a Lot shall have a right and easement of ingress and egress use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot subject to the following provisions

- (1) Subject to the provisions for the Raleigh City Code the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property to limit the number of guests of Lot Owners and tenants who may use the Common Property and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner his family tenants guests and invitees
- (2) The right of the Association to suspend the voting rights of a Owner and the right of an Owner to use the recreational facilities available for use by the Community if any for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid and for a 60 day period of time for an infraction of the Declaration Bylaws or rules and regulations
- (3) The right of the Association to borrow money for the purpose of improving the Common Property or any portion thereof or for construction repairing or improving any facilities located or to be located thereon and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property provided however the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights interests options easements and privileges herein reserved or established for the benefit of Declarant the Association or any Lot or Owner or the holder of any Mortgage irrespective of when executed given by Declarant or any Owner encumbering any Lot or other property located within the Community Any such Mortgage on the Common Property shall be subject to approval by at least two thirds (2/3) of the Total Association Vote (excluding votes held by the Declarant) Any provision in this Declaration or in the any such Mortgage given by the Association to the contrary notwithstanding the exercise of any rights

therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights easements or privileges herein reserved or established for the benefit of Declarant the Association or any Lot or Owner or the holder of any Mortgage irrespective of when executed given by Declarant or any Owner encumbering any Lot or other property located within the Community

- (4) The right of the Association to dedicate or grant licenses permits or easements over under and through the Common Property to governmental entities or utility companies for public purposes and
- (5) The right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Raleigh City Attorney or his deputy and affirmative vote of at least two thirds (2/3) of the Total Association Vote excluding votes held by the Declarant
- (6) Exchange Common Property in accordance with Raleigh City Code §10 3073(a)(2) or its successor provisions

ii Delegation Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot if leased

c Easements for Utilities There is hereby reserved to the Declarant and the Association blanket easements upon across above and under all property within the Community including all Lots (excluding the residential dwelling) for access ingress egress installation repairing replacing and maintaining all utilities serving the Community or any portion thereof This easement shall include without limitation gas water sanitary sewer telephone electricity cable television security as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community It shall be expressly permissible for the Declarant the Association or the designee of either as the case may be to install repair replace and maintain or to authorize the installation repairing replacing and maintaining of such wires conduits pipes cables and other equipment related to the providing of any such utility or service Should any party furnishing any such utility or service request a specific license or easement by separate recordable document the Declarant or the Board as the case may be shall have the right to grant such easement

d Easement for Drainage Declarant hereby reserves a perpetual easement across the Community for the purpose of altering drainage and water across the Community for the purpose of altering drainage and water flow This right shall include but is not limited to altering swales installing drains drainage ditches pipes inlets headwalls and altering channeling or piping waterflow across any Lot or any property in the Community Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property reasonable steps shall be taken to protect such property and damage shall be repaired by the Person causing the damage at its sole expense

e Easement for Entry In addition to the other rights reserved to Declarant and the Association the Declarant or the Association shall have the right (but not the obligation) to enter upon any

property or Lot within the Community for emergency security and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

- f. Easement for Maintenance Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Community determined in the sole discretion of the Declarant and the Association as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property; reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.
- g. Easement for Entry Features There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Community over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.
- h. Construction and Sale Period Easement Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include without limitation:
 - i. The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community.
 - ii. The right to tie into any portion of the Community with driveways, parking areas, and walkways.
 - iii. The right to tie into or otherwise connect and use (without a tap on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services.
 - iv. The right (but not the obligation) to construct recreational facilities on Common Property.

- v The right to carry on sales and promotional activities in the Community
 - vi The right to place direction and marketing signs on any portion of the Community including any Lot or Common Property
 - vii The right to construct and operate business offices signs construction trailers model residences and sales offices incidental to the construction development and sales activities and
 - viii Declarant and any such builder or developer may use residences offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property and reasonable steps shall be taken to protect such property from damage Any damage shall be repaired by the Person causing the damage at its sole expense This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration
- 1 Irrigation Easements There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds lakes and other bodies of water located within the Community for irrigation purposes
 - j Fence Easement Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility detention pond or retention pond for the purpose of access to such facility or pond and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation rule ordinance or plan approval requirement
 - k Adjacent Owner Easement If any dwelling is located closer than five (5) feet from the 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 the 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
 - l Easements for Governmental Access An easement is hereby established over the Common Property and every Lot within the Community for the benefit of applicable governmental agencies for installing removing and reading water meters maintaining and replacing water and sewer facilities and acting for other purposes consistent with public safety and welfare including without limitation law enforcement fire protection garbage collection and the delivery of mail
 - m Well Easement Lots 144 145 147 148 179 150 and 151 are burdened in part by a well site easement as shown on the recorded subdivision plats of the Community Within this easement no structures of any kind shall be maintained and no impervious surfaces shall be installed

12 General Provisions

- a Enforcement Each Owner and Occupant shall comply strictly with the Bylaws the rules and regulations and the use restrictions as they may be lawfully amended or modified from time to time and with the covenants conditions and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot if any. In the event of a conflict between the provisions of this Declaration and the Bylaws the Declaration shall prevail. The Board may impose fines or other sanctions which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both maintainable by the Board of Directors on behalf of the Association or in a proper case by an aggrieved Owner. To determine fines and sanctions against Owners a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge an opportunity to be heard and to present evidence and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred and fifty dollars (\$150.00) for the violation and for each day after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien. If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien a notice of violation of the Declaration Bylaws rules and regulations use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.
- b Self Help In addition to any other remedies provided for herein the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove using such force as may be reasonably necessary any structure thing or condition which violates this Declaration the Bylaws the rules and regulations or the use restriction. Unless an emergency situation exists the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self help. Notwithstanding the foregoing vehicles may be towed after reasonable notice. All costs of self help including reasonable attorney's fees shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.
- c Duration The covenants and restrictions of this Declaration shall run with and bind the Community and shall inure to the benefit of and shall be enforceable by Declarant the Association or any Owner their respective legal representatives heirs successors and assigns for a period of twenty five (25) years. Thereafter this Declaration shall be automatically extended for successive periods of ten (10) years unless a written instrument reflecting disapproval signed by the then Owners of 2/3 of the Lots and the Declarant (if the Declarant has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.
- d Amendment This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute rule or regulation or judicial determination which shall be in conflict therewith (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans including for example the Federal National Mortgage Association the Department of Housing and Urban Development the Veterans Administration or Federal Home Loan Mortgage Corporation to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration or (d) if such amendment is necessary to enable any

governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration provided however any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing

In addition to the above this Declaration may be amended provided that

- (1) For so long as the Declarant has the right to annex additional property with the affirmative written consent of the Declarant and upon the affirmative vote or written consent or any combination thereof of the Owners of at least two thirds (2/3) of the Lots
- (2) If the Declarant no longer has the right to annex additional property upon the affirmative vote or written consent or any combination thereof of the Owners of at least two thirds (2/3) of the Lots

No amendment shall become effective without the prior approval of the Raleigh City Attorney or his deputy

- e Partition The Common Property shall remain undivided and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof
- f Gender and Grammar The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine
- g Severability Whenever possible each provision of this Declaration shall be interpreted in such manner as to be effective and valid but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and to this end the provisions of this Declaration are declared to be severable
- h Captions The captions are inserted only for convenience and are in no way to be construed as defining limiting extending or otherwise modifying or adding to the particular Article or Section to which they refer
- i Perpetuities If any of the covenants conditions restrictions or other provisions of this Declaration shall be unlawful void or voidable for violation of the rule against perpetuities then such provisions shall continue only until twenty one (21) years after the death of the last survivor of the now living descendants of Elizabeth II Queen of England
- j Indemnification To the fullest extent allowed by applicable North Carolina law the Association shall indemnify every officer of the Association and director of the Association against any and all expenses including without limitation attorney's fees imposed upon or reasonably incurred by any officer or director in connection with any action suit or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director The officers and directors shall not be liable for any mistake of judgment negligent or otherwise except for their own individual willful misfeasance malfeasance misconduct or bad faith The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all

liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director or former officer or director may be entitled. This indemnification shall also include attorneys fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers and directors liability insurance to fund this obligation if such coverage is reasonably available. Indemnification shall not include liabilities that result from being an Owner of properties within the Community.

k Books and Records

- 1 Inspection by Members and Mortgagees This Declaration the Bylaws copies of rules and use restrictions membership register books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.
- 11 Rules for Inspection The Board shall establish reasonable rules with respect to (1) notice to be given to the custodian of the records (2) hours and days of the work when such an inspection may be made and (3) payment of the cost of reproducing copies of documents.
- 111 Inspection by Directors Every director shall have the absolute right at any reasonable time to inspect all books records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.
- 1 Financial Review A review of the books and records of the Association shall be made annually in the manner as the Board may decide provided however after having received the Board's financial statements at their annual meeting by a written petition of the majority of the Owners the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.
- m Notice of Sale, Lease, or Acquisition In the event an Owner sells or leases such Owner's Lot the Owner shall give to the Association in writing prior to the effective date of such sales or lease the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall give the Association in writing the name and mailing address of the Owner and such other information as the Board may reasonably require.
- n Agreements Subject to the prior approval of Declarant (so long as Declarant has the right to unilaterally annex additional property to the Community) all agreements and determinations including settlement agreements regarding litigation involving the Association lawfully authorized by the Board shall be binding upon all Owners their heirs legal representatives successors assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

- o Implied Rights The Association may exercise any right or privilege given to it expressly by the Declaration the Bylaws the Articles of Incorporation any use restriction or rule and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege
- 13 Use of Recreational Facilities Declarant may but shall not be required to construct recreational facilities on portions of the Common Property These facilities may take the form of tennis courts a pool bathhouse viewing areas and the like In the event Declarant constructs such recreational facilities the following shall apply
- a For so long as Declarant has an option to unilaterally subject additional property to this Declaration Declarant subject to the provisions of the Raleigh City Code shall have the right to grant to persons who are not members of the Association the right to use the recreational facilities The extent and duration of nonmember use and the fee to be charged shall be determined solely by Declarant The Declarant may grant nonmember use rights to Persons as an easement appurtenant to such Person's residential real property so that such use rights shall automatically inure to the benefit of such Persons and their heirs and assigns
 - b Any use right granted to nonmembers which extends beyond the time period specified in (a) above shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by the Declarant are complied with by the nonmember user
 - c Declarant hereby reserves unto itself its successors and assigns a non exclusive perpetual right and privilege and easement with respect to the Community for the benefit of Declarant its successors assigns and the above nonmember users without obligation or charge These rights shall include without limitation an easement for travel across all Common Property in the Community
 - d Declarant shall not be responsible for any fees to be paid by such nonmember
 - e Declarant shall have the sole right to grant nonmembers access during the time period specified in (a) above
- 14 Variances Notwithstanding anything to the contrary contained herein the Declarant (for so long as Declarant may unilaterally subject additional property to this Declaration) and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration the Bylaws and any rule regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community
- 15 Litigation No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy five percent (75%) of the Total Association Vote This Section shall not apply however to (a) actions brought by the Association to enforce the provisions of this Declaration (including without limitation the foreclosure of liens) (b) the imposition and collection of assessments as provided in this Declaration (c) proceedings involving challenges to ad valorem taxation or (d) counterclaims brought by the Association in proceedings instituted against it This Section shall not be amended during the time period when Declarant owns any property for development or sale in the Community or has the right to unilaterally annex additional property to the Community unless such amendment is made by the Declarant

- 16 Capitalization of Association Upon acquisition of record title to a Lot by the first Owner other than Declarant or a builder a contribution of \$50 00 (Initiation Fee) shall be made by or on behalf of the purchaser to the Association as set forth below The Initiation Fee shall be in addition to not in lieu of any annual or special assessments The Initiation Fee shall be payable at Closing shall not be prorated and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid The Initiation Fee shall be deposited into an account of the Association and disbursed from that account (a) \$50 00 for expenses and costs of the Association in accordance with the Declaration and Bylaws as amended and (b) 33% of the Initiation Fee shall be held by the Association as a long term Maintenance Reserve to be disbursed by the Association for maintenance of any property which the Association is required or permitted to maintain in its sole discretion The Initiation Fee referred to in this paragraph is payable only one time and will not be charged subsequent purchasers of a Lot once paid
- 17 Cluster Development The real property subject to this Declaration and which may be annexed to this Declaration is part of a cluster unit development approved by the City of Raleigh in which residential density transfers are permitted therefore even though some Lots may appear to contain enough land to construct additional dwelling units or create additional Lots prior density transfers approved within the cluster unit development may in fact preclude City approval of additional dwellings or further subdividing of Lots

May 27 1999

IN WITNESS WHEREOF the Declarant herein hereby executes this instrument under seal this the
15th day of June 1999

Declarant FORESTVILLE ESTATES LLC a
North Carolina limited liability company (SEAL)

By W R Henderson (SEAL)

Its Manager

Attest _____

Its _____

[CORPORATE SEAL]

Signed sealed and delivered this _____ day of
_____, 1999 in the presence of

Witness

Witness

STATE OF North Carolina

COUNTY OF Wake

This 15th day of June 1999 personally came before me M. Bradley Harrold
Notary Public for the County and State W R Henderson who being by me duly sworn
says that he is Manager of Forestville Estates LLC and that the seal
affixed to the foregoing instrument in writing is the ~~corporate seal~~ of said company and that said writing
was signed and sealed by him in behalf of said corporation by its authority duly given And the said
W R Henderson acknowledged the said writing to be the act and deed of said
corporation

Witness my hand and official seal this the 15th day of June 1999

M Bradley Harrold
Notary Public
My commission expires 8/16/2003

[NOTARY SEAL]

M BRADLEY HARROLD
NOTARY PUBLIC
WAKE COUNTY N.C

May 27 1999

EXHIBIT A"

**BEING all of The Enclave at Forestville Farms containing 12 472 acres as shown on a plat
recorded in Book of Maps 1999, Page 1096, Wake County Registry**

May 27 1999

EXHIBIT "B"

BEING all of that 40 533 acre tract shown on a plat recorded in Book of Maps 1996, Page 1715, Wake County Registry, SAVE AND EXCEPT the following tract

BEING all of that portion of The Enclave at Forestville Farms (shown on a plat recorded in Book of Maps 1999, Page 1096, Wake County Registry) which lies within the above described 40 533 acre tract

May 27 1999

EXHIBIT "C"

BY-LAWS

OF

**THE ENCLAVE AT FORESTVILLE FARMS
HOMEOWNERS ASSOCIATION, INC**

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BY LAWS
OF
THE ENCLAVE AT FORESTVILLE FARMS
HOMEOWNERS ASSOCIATION, INC

Article I
Name, Membership, Applicability, and Definitions

1 1 Name The name of the Association shall be The Enclave at Forestville Farms Homeowners Association Inc ("Association")

1 2 Membership The Association shall have one class of membership as is more fully set forth in that Declaration of Protective Covenants for The Enclave at Forestville Farms Subdivision ("Declaration") the terms of which pertaining to membership are specifically incorporated by reference herein

1 3 Definitions The words used in these By Laws shall have the same meaning as set forth in the Declaration unless the context shall prohibit

Article II
Association Meetings, Quorum, Voting, Proxies

2 1 Place of Meetings Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board either in the Community or as convenient thereto as possible and practical

2 2 First Meeting and Annual Meetings An annual or special meeting shall be held within one year from the date the Declaration is recorded Annual meetings shall be set by the Board so as to occur no later than 60 days after the close of the Association's fiscal year

2 3 Special Meetings The President may call special meetings In addition it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least 25% of the Total Association Vote (the consent of the Declarant shall not be required) The notice of any special meeting shall state the date time and place of such meeting and the purpose thereof No business shall be transacted at a special meeting except as stated in the notice

2 4 Notice of Meetings It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the Association) a notice of

each annual or special meeting of the Association stating the time and place where it is to be held and in the notice of a special meeting the purpose thereof. If an Owner wishes notice to be given at an address other than the Lot the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Except as otherwise provided in the Declaration or articles of incorporation notices shall be served not less than ten nor more than 60 days before a meeting. Notice is deemed given four days after mailing.

2.5 Waiver of Notice Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may in writing waive notice of any meeting of the members either before or after such meeting. Attendance at a meeting by a member whether in person or by proxy shall be deemed waiver by such member of notice of the time date and place thereof unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6 Adjournment of Meetings If any meetings of the Association cannot be held because a quorum is not present a majority of the members who are present at such meeting either in person or by proxy may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. No additional notice is necessary. At such adjourned meeting at which a quorum is present any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.7 Voting The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration and such voting rights are specifically incorporated herein. Fractional and cumulative voting are prohibited.

2.8 Proxies At all meetings of members each member may vote in person or by proxy. All proxies shall be in writing dated and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member or of written revocation or upon the expiration of 11 months from the date of the proxy.

2.9 Quorum Except as otherwise provided in the Declaration or articles of incorporation the presence in person or by proxy of 25% of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum.

2.10 Action Without A Formal Meeting Any action to be taken at a meeting of the members or which may be taken at a meeting of the members may be taken without a meeting if one or more written consents setting forth the action so taken shall be signed by members holding at least 80% of the Total Association Vote on the effective date of the action. Action taken without a meeting shall be effective on the date that the last consent is executed and consented to by the Declarant if required unless a later effective date is specified therein.

Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association

2 11 Action By Written Ballot Any action to be taken at any annual regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein The Association shall deliver a written ballot to each member entitled to vote on the matter The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, if any state the percentage of approvals necessary to approve each matter other than election of directors provide a space for the eligible voting member's signature and specify the time by which a ballot must be received by the Association in order to be counted A timely written ballot received by the Association may not be revoked without the consent of the Board The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association

2 12 Members List The record date for determining members entitled to notice shall be the close of business of the day preceding the date notices are given The record date for determining members entitled to vote at a meeting shall be the close of business of the business day preceding the date of the meeting The Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting The list must show the address and number of votes each member is entitled to vote at the meeting Additionally the Association shall prepare on a current basis through the time of the membership meeting a list of members who are entitled to vote but not entitled to notice These lists shall be made available for any member for the purpose of communication concerning the meeting and shall make the lists available at the meeting and any member member's agent or member's attorney is entitled to inspect the lists at any time during the meeting

Article III

Board of Directors Number, Powers, Meetings

A Composition and Selection

3 1 Governing Body, Composition The affairs of the Association shall be governed by a Board of Directors Except as provided in Section 3 2 the directors must reside in the Community and shall be members or spouses of such members, provided however no person and his or her spouse may serve on the Board at the same time

3 2 Directors Appointed by Declarant The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association

until such time as the first of the following events shall occur (a) five years from the date the Declaration was recorded (b) the date on which 75% of the Lots to be developed in all phases in accordance with the preliminary subdivision plans on file with the Raleigh City Planning Department as may be amended of the development as shown on preliminary subdivision plan on file (S 59 98) with the Raleigh City Planning Department as may be amended have been conveyed and the dwellings upon which a certificate of occupancy has been issued or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association The directors selected by the Declarant need not be Owners or residents in the Community

3 3 Number of Directors The Board shall consist of three members After the Declarant's right to appoint directors and officers terminates the Board may expand the number of directors to five or seven members which shall be filled by a vote of the members in accordance with Section 3 5(b)

3 4 Nomination of Directors Elected directors shall be nominated from the floor and may also be nominated by a nominating committee if such a committee is established by the Board All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes

3 5 Election and Term of Office Owner elected directors shall be elected and hold office as follows

(a) After the Declarant's right to appoint directors and officers terminates the Association shall call a special meeting to be held at which Owners shall elect three directors

(b) Thereafter directors shall be elected at the Association's annual meeting All eligible voting members of the Association shall be entitled to vote on all directors to be elected and the candidate(s) receiving the most votes shall be elected

At the special meeting in which the Owners initially elect directors two directors shall be elected to two year terms and one director shall be elected to a one year term At the expiration of the initial term of office of each respective Owner elected director a successor shall be elected to serve for a term of two years The directors shall hold office until their respective successors shall have been elected by the Association

3 6 Removal of Directors At any regular or special meeting of the Association duly called any one or more of the directors may be removed with or without cause by a majority of the Total Association Vote and a successor may then and there be elected to fill the vacancy thus created A director whose removal has been proposed by the Owners shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting Additionally any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors at a meeting This Section shall not apply to directors appointed by Declarant

3 7 Vacancies Vacancies in the Board caused by any reason excluding the removal of a director by vote of the Association shall be filled by a vote of the majority of the remaining directors even though less than a quorum at any meeting of the Board Each person so selected shall serve the unexpired portion of the term Vacancies in directors appointed by the Declarant shall be replaced by the Declarant

B Meetings

3 8 Organization Meetings The first meeting of the Board following each annual meeting of the membership shall be held within ten days thereafter at such time and place as shall be fixed by the Board

3 9 Regular Meetings Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors but at least four such meetings shall be held during each fiscal year with at least one per quarter Notice of the regular schedule shall constitute sufficient notice of such meetings

3 10 Special Meetings Special meetings of the Board shall be held when requested by the President or by any two directors The notice shall specify the time and place of the meeting and the nature of any special business to be considered The notice shall be given to each director by one of the following methods (a) by personal delivery (b) written notice by first class mail postage prepaid (c) by telephone communication either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director (d) electronic message fiber optic or telecommunication to the director or (e) by commercial delivery service to such director's home or office All such notices shall be given or sent to the director's address telephone number or other place of delivery as shown on the records of the Association Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting Notices given by personal delivery telephone or telecommunication shall be given at least 48 hours before the time set for the meeting

3 11 Waiver of Notice The transactions of any meeting of the Board however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting each of the directors not present signs a written waiver of notice a consent to holding the meeting or an approval of the minutes The waiver of notice or consent need not specify the purpose of the meeting Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice

3 12 Quorum of Board of Directors At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board

3 13 Compensation No director shall receive any compensation from the Association for acting as such

3 14 Open Meetings All meetings of the Board shall be open to all members but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board

3 15 Executive Session The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters litigation in which the Association is or may become involved and orders of business of a similar nature The nature of any and all business to be considered in executive session shall first be announced in open session

3 16 Action Without A Formal Meeting Unless prohibited by North Carolina law any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents in writing setting forth the action so taken shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records

3 17 Telephonic Participation One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time and those directors so participating shall be present at such meeting Any such meeting at which a quorum participates shall constitute a meeting of the Board

C Powers and Duties

3 18 Powers The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and as provided by law may do all acts and things as are not by the Declaration Articles or these By Laws directed to be done and exercised exclusively by the members In addition to the duties imposed by these By Laws or by any resolution of the Association that may hereafter be adopted the Board shall have the power to and be responsible for the following in way of explanation but not limitation

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses

(b) making assessments to defray the Common Expenses and establishing the means and methods of collecting such assessments

(c) providing for the operation care upkeep and maintenance of Common Property lift stations and force mains and all areas which are the maintenance responsibility of the Association

May 27 1999

(d) designating hiring and dismissing the personnel necessary for the operation of the Association and where appropriate providing for the compensation of such personnel and for the purchase of equipment supplies and material to be used by such personnel in the performance of their duties

(e) collecting the assessments depositing the proceeds thereof in a bank depository which it shall approve and using the proceeds to administer the Association

(f) making and amending use restrictions and rules and regulations

(g) opening of bank accounts on behalf of the Association and designating the signatories required

(h) enforcing by legal means the provisions of the Declaration these By Laws and the rules and regulations adopted by it and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association (subject to the provisions of paragraph 15 of the Declaration)

(i) obtaining and carrying insurance against casualties and liabilities as provided in the Declaration and paying the premium cost thereof

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration and specifying the maintenance and repair expenses and any other expenses incurred

(l) contracting with any Person for the performance of various duties and functions and

(m) paying ad valorem taxes and public assessments levied against the Common Property owned in fee by the Association

3 19 Management Agent The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize The Declarant or an affiliate of the Declarant may be employed as managing agent or Manager The term of any management agreement shall not exceed one year and shall be subject to termination by either party without cause and without penalty upon not more than 90 days written notice

3 20 Borrowing The Board shall have the power to borrow money (but not the right to mortgage the Common Property) without the approval of the members of the Association provided however the Board shall obtain membership approval in the same manner as for special assessments in the event that the proposed borrowing is for the purpose of modifying

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improving or adding amenities or the total amount of such borrowing exceeds or would exceed Ten Thousand Dollars (\$10 000 00) outstanding debt at any one time

3 21 Fining or Suspension Procedure The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to use any part of the Common Property unless and until the following procedure is followed

(a) Notice Written notice shall be served upon the violator by first class or certified mail sent to the last address of the member shown on the Association's records specifying

(i) the nature of the violation the fine or suspension to be imposed and the date not less than 15 days from the date of the notice that the fine or suspension will take effect

(ii) that the violator may within ten days from the date of the notice request a hearing regarding the fine or suspension imposed

(iii) the name address and telephone numbers of a person to contact to challenge the fine or suspension

(iv) that any statements evidence and witnesses may be produced by the violator at the hearing and

(v) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice

(b) Hearing If a hearing is requested it shall be held before the Board in executive session and the violator shall be given a reasonable opportunity to be heard The minutes of the meeting shall contain a written statement of the results of the hearing No fine or suspension shall be imposed prior to the date that is five days after the date of the hearing

(c) Enforcement In any action or proceeding to enforce the Declaration these Bylaws the rules and regulations of the Association or decision of the Board the Association shall be entitled to recover all expenses from the violator, including all attorney's fees thus incurred

Article IV **Officers**

4 1 Officers The officers of the Association shall be a President Vice President Secretary and Treasurer Any two or more offices may be held by the same person excepting the offices of President and Secretary The President and Treasurer shall be elected from among the members of the Board The Board may appoint such other officers including one

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or more additional Vice Presidents Assistant Secretaries or Assistant Treasurers as it shall deem desirable

4 2 Election, Term of Office, and Vacancies Except during the period in which the Declarant has the right to appoint the officers of the Association under Section 3 2 the officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members A vacancy in any office arising because of death resignation removal or otherwise may be filled by the Board for the unexpired portion of the term

4 3 Removal Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby

4 4 President The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Code

4 5 Vice President The Vice President shall act in the President's absence and shall have all powers duties and responsibilities provided for the President when so acting

4 6 Secretary The Secretary shall keep the minutes of all meetings of the Association and of the Board shall prepare execute certify and record any amendments to the Declaration on behalf of the Association and shall have charge of such books and papers as the Board may direct and shall in general perform all duties incident to the office of the secretary of a non profit corporation organized in accordance with North Carolina law

4 7 Treasurer The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements for preparing all required financial statements and tax returns and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board The Treasurer shall cause an annual independent audit to be done of the Association's financial records

4 8 Resignation Any officer may resign at any time by giving written notice to the Board Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective

Article V **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized Each committee shall be composed and shall operate in

accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board

Article VI
Miscellaneous

6 1 Fiscal Year The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board

6 2 Parliamentary Rules Robert's Rules of Order (current edition) shall govern the conduct of all Association proceedings when not in conflict with North Carolina law the Articles of Incorporation the Declaration these By Laws or a ruling made by the person presiding over the proceeding

6 3 Conflicts If there are conflicts or inconsistencies between the provisions of North Carolina law the Articles of Incorporation the Declaration and these By Laws the provisions of North Carolina law the Declaration the Articles of Incorporation and the By Laws (in that order) shall prevail

6 4 Amendment These By Laws may be amended by the Board if such amendment is necessary (a) to bring any provision hereof into compliance with any applicable governmental statute rule regulation or judicial determination (b) to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration (c) to meet the requirements of an institutional or governmental lender or purchaser of mortgage loans, including for example the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to the Declaration or (d) to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration

Further so long as Declarant has the right unilaterally to subject additional property to the Declaration Declarant may unilaterally amend these Bylaws for any other purpose provided however such amendment shall not adversely affect the substantive rights or title of any Lot Owner without the consent of the affected Lot Owner

In addition these By Laws may be amended upon the affirmative vote or written consent or any combination thereof of at least two thirds (2/3) of the Total Association Vote

So long as the US Department of Veterans Affairs (if it is then guaranteeing Mortgages in the Community or has issued a project approval for the guaranteeing of such mortgages) and/or the US Department of Housing and Urban Development (if it is then insuring any Mortgage in the Community or has issued a project approval for the insuring of such mortgages) shall have the right to veto amendments to these By Laws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association

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CERTIFICATION

I the undersigned do hereby certify

That I am the duly elected and acting Secretary of The Enclave at Forestville Farms Homeowners Association Inc a North Carolina nonprofit corporation

That the foregoing By Laws constitute the original By Laws of said Association as duly adopted at a meeting of the Board of Directors thereof held on the _____ day of _____ 1999

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed the seal of said Association this _____ day of _____ 1999

_____[SEAL]
Secretary

Laura M Riddick
Register of Deeds
Wake County, NC



Book 008337 Page 00428 00475



Wake County Register of Deeds
Laura M Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate___ of _____
_____ *M Bradley Harold* _____

____ 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 *Tara Rine*
Assistant/Deputy Register of Deeds

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20 # of Time Stamps Needed

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48 # of Pages

New Time Stamp