

BK012650PG01607

WAKE COUNTY, NC 294
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/12/2007 AT 12:08:29

BOOK:012650 PAGE:01607 - 01657

Drawn by and HOLD FOR:
Moore & Alphin, PLLC (Box 155)

**MASTER DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR
TWELVE OAKS**

CONTENTS

	<u>Page</u>
PREAMBLE	1
ARTICLE I - DEFINITIONS	2
Section 1 - Act	
Section 2 - Additional Property	
Section 3 - Apartment Unit	
Section 4 - Association and Master Association	
Section 5 - Board of Directors and Board	
Section 6 - Builder	
Section 7 - Bylaws	
Section 8 - Code	3
Section 9 - Common Area and Common Property	
Section 10 - Common Expenses	
Section 11 - Condominium	4
Section 12 - Club	
Section 13 - Club Facilities	
Section 14 - Club Owner	
Section 15 - Club Property	
Section 16 - Declarant	
Section 17 - Declarant Control Period	
Section 18 - Declaration and Master Declaration	5
Section 19 - Development Parcel	
Section 20 - Dwelling, Dwelling Unit and Unit	
Section 21 - Exempt Property	

BK012650PG01608

	<u>Page</u>
Section 22 - Golf Club	6
Section 23 - Legal Requirements	
Section 24 - Limited Common Area and Limited Common Property	6
Section 25 - Limited Common Expense	
Section 26 - Lot	
Section 27 - Member	
Section 28 - Neighborhood	7
Section 29 - Owner	
Section 30 - Person	
Section 31 - Properties	
Section 32 - Registry	
Section 33 - Special Declarant Rights	
Section 34 - Stormwater Agreement	
Section 35 - Stormwater Control Measures	
Section 36 - Sub-Association	8
Section 37 - Sub-Association Common Area and Sub-Association Common Property	
Section 38 - Sub-Association Declaration	
Section 39 - Town	
 ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION AND	9
WITHIN THE JURISDICTION OF THE TWELVE OAKS MASTER ASSOCIATION, INC.	
Section 1 - Existing Property	
Section 2 - Additions to Existing Property	
Section 3 - Conveyance of Common Property in Annexed Property	10
Section 4 - Withdrawal of Properties from the Declaration	
Section 5 - Effect of Withdrawal	11
Section 6 - Sub-Association Declaration	
Section 7 - Neighborhood Declaration	
 ARTICLE III - MEMBERSHIP AND VOTING RIGHTS	12
Section 1 - Membership	
Section 2 - Voting Rights	
Section 3 - Declarant's Right to Appoint Directors and Officers of the Association ...	13
Section 4 - Vacant/Leased Dwellings	
 ARTICLE IV - PROPERTY RIGHTS	13
Section 1 - Owners' Easements of Enjoyment and Access	
Section 2 - Delegation of Use	14
Section 3 - Conveyance of Title to the Association	15
Section 4 - Regulation and Maintenance of Common Property and Common Property Easements	

BK012650PG01609

	<u>Page</u>
Section 5 - Services to Lots Served by Private Streets or Alleys (UDO §7.07.B.22) ...	16
Section 6 - Association's Right to Establish and Enforce Speed Control and Parking Regulations	
ARTICLE V - COVENANT FOR MAINTENANCE ASSESSMENTS	17
Section 1 - Creation of the Lien and Personal Obligation of Assessments	
Section 2 - Purposes of Assessments	
Section 3 - Maximum Annual Assessment	
Section 4 - Date of Commencement of Annual Assessments; Amount of Assessments; Certificate of Payment; Ratification of Budgets	18
Section 5 - Social Membership Assessments	19
Section 6 - Special Assessments; Limited Special Assessments	
Section 7 - Notice and Quorum for Any Action Authorized Under Sections 3(b) & 6 .	20
Section 8 - Effect of Nonpayment of Assessments; Remedies	
Section 9 - Subordination of the Lien to Mortgages	
Section 10 - Working Capital Fund	
Section 11 - Declarant's Obligation to Fund Operating Deficits	21
Section 12 - Neighborhood Assessments	
Section 13 - Reserve Funds	
ARTICLE VI - MAINTENANCE OF LOTS AND COMMON PROPERTY	22
Section 1 - Owner's Responsibility; Remedy for Owner's Failure to Maintain	
Section 2 - Maintenance by the Association	
Section 3 - Assessment of Cost	
Section 4 - Stormwater Management	
ARTICLE VII - RIGHTS OF LENDERS	25
Section 1 - Books and Record	
Section 2 - Notice to Lenders	
Section 3 - Approval of Holders of First Deeds of Trust	26
Section 4 - Payment of Taxes and Insurance Premiums	
Section 5 - Collection of Assessments	
ARTICLE VIII - EASEMENTS	26
Section 1 - Access and Utility Easements	
Section 2 - Easement for Support	27
Section 3 - Easement for Encroachments	
Section 4 - Easement over Common Property	28
Section 5 - Association's Easements Upon Lots	
Section 6 - Easements for Governmental Access	
Section 7 - Easements for Development	
Section 8 - Easement Regarding Golf, Tennis, or Other Recreational Use	
Section 9 - Easements for Errant Golf Balls; Limitation of Liability	29

BK012650PG01610

	<u>Page</u>
ARTICLE IX - ARCHITECTURAL CONTROL	30
ARTICLE X - USE RESTRICTIONS	31
Section 1 - Land Use and Building Type	
Section 2 - Building Setbacks; House Location	
Section 3 - Fences	
Section 4 - Temporary Structures	
Section 5 - Parking; Driveways and Parking Pads; Abandoned Vehicles	
Section 6 - Animals	32
Section 7 - Nuisances	
Section 8 - Signs	
Section 9 - Antennas; Satellite Dishes	33
Section 10 - Swimming Pools	
Section 11 - Mailboxes	
Section 12 - Maintenance of Lots and Improvements; Construction	
Section 13 - Garbage; Unsightly Storage	34
Section 14 - Leasing of Dwellings	
Section 15 - Waiver of Violations	
Section 16 - Street Lighting	35
Section 17 - Irrigation	
ARTICLE XI - THE CLUB AND GOLF COURSE	35
Section 1 - Owner's Covenants	
Section 2 - The Club	
Section 3 - Golf Course	36
Section 4 - Enforceability	
ARTICLE XII - DISCLOSURES AND WAIVERS	37
Section 1 - View Impairment	
Section 2 - Construction Activities	
Section 3 - Water Management	
Section 4 - Liability for Association Operations	38
Section 5 - Conveyance of Common Property	
ARTICLE XIII - GENERAL PROVISIONS	38
Section 1 - Enforcement	
Section 2 - Term; Amendment	39
Section 3 - Non-Liability of the Governmental Entities	
Section 4 - Subdivision of Lots	40
Section 5 - Insurance	
Section 6 - Rules and Regulations	
Section 7 - Condemnation/Casualty	
Section 8 - Association Contracts and Leases During Declarant Control Period	41
Section 9 - Evidence of Member Approval	

BK012650PG01611

	<u>Page</u>
Section 10 - Number and Gender	41
Section 11 - Captions	
Section 12 - Severability	42
Section 13 - Conflicts	
Section 14 - Rule Against Perpetuities	
Section 15 - Declarant	
Section 16 - Non-Discrimination	
Section 17 - Security Measures	

BK012650PG01612

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
TWELVE OAKS**

This Declaration is made as of the date on which it is recorded in the Office of the Register of Deeds for Wake County, North Carolina, by **TWELVE OAKS, L.L.C.**, a Virginia limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of approximately 678.42 acres of land located in Holly Springs Township, Wake County, North Carolina, portions of which Declarant intends to develop into a mixed-use community, to be known as **TWELVE OAKS** (the "Community"), which may (but shall not be required to) include any one or more of the following: detached single-family residential dwellings, townhouses, condominiums, residential apartments, other types of attached or detached residential dwellings, public or private streets, buffers, greenways, open space, recreational facilities (including a golf course and associated facilities, and other uses consistent with the zoning of the Properties and City approvals for the Subdivision; and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of certain Common Areas (hereinafter defined) within the Community, to provide for maintenance of certain storm water drainage systems and facilities within the Community, and to provide for the enforcement of covenants and restrictions applicable to the Community, and, to that end, desires to subject the Properties (hereinafter defined) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner of any portion thereof; and

WHEREAS, Declarant has incorporated under North Carolina law, as a nonprofit corporation, the Twelve Oaks Master Association, Inc., to carry out the foregoing functions.

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

BK012650PG01613

ARTICLE I DEFINITIONS

The following terms, when used in this Declaration, shall have the meaning set forth below. Capitalized terms not specifically defined in this Article I shall have the meaning of such term as set forth in the Act, the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes), or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.

Section 2. "Additional Property" shall mean and refer to all real property subjected to this Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Declaration.

Section 3. "Apartment Unit" shall mean and refer to Dwelling Unit in a building located on a Development Parcel that contains one or more other Apartment Units, and which Apartment Units primarily are occupied or intended for occupancy by tenants or sub-tenants of the Owner of the building in which such Apartment Units are located, provided, however, that the foregoing definition shall not preclude the Owner of the Development Parcel on which the Apartment Units are located from living in an Apartment Unit. An "Apartment Unit" shall be deemed to exist when a certificate of occupancy is issued for the building in which such Unit is located. Although Apartment Units are located on a Development Parcel, as certificates of occupancy are issued for them by the Town, Apartment Units become subject to assessments under the Declaration as Apartment Units rather than as part of the Development Parcel on which they are located.

Section 4. "Association" and "Master Association" (the terms being used interchangeably) shall mean and refer to the **TWELVE OAKS MASTER ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws, and is the "Executive Board" as defined in the Act.

Section 6. "Builder" shall mean and refer to a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing a Dwelling for resale on each of such Lots.

Section 7. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

BK012650PG01614

Section 8. "Code" shall mean and refer to the Town of Holly Springs Unified Development Ordinance, including all rules, regulations and policies adopted pursuant thereto, and including all amendments, supplements and replacements thereof enacted from time to time.

Section 9. "Common Area" and "Common Property" (the terms being used interchangeably) shall mean and refer to (i) all real property and improvements thereon owned in fee, leased or used by the Association for the common use, enjoyment or benefit of the Members or the Properties (including, without limitation, private streets, private alleys and interior access drives and driveways, if any), (ii) all rights and easements of the Association in, on, under, over and through any real property not owned in fee by the Association, together with all improvements on such real property that are owned or maintained by the Association, each such easement or right also being referred to herein as a "Common Area Easement" or a "Common Property Easement", and (iii) all personal property owned, leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties. Common Area Easements are included within the definition of Common Area, even though Common Area Easements may sometimes be referred to separately herein. Common Area Easements may include portions of public street rights-of-way or other property owned by, dedicated to, or governed by a governmental entity, and may include, without limitation, required buffer areas, street islands, landscaping, street trees, and other improvements. This definition of Common Area also includes Limited Common Property. All Common Property not maintained by a Sub-Association (hereinafter defined) shall be maintained by the Master Association unless dedicated to public use and accepted by a public agency, authority or utility or conveyed to another nonprofit entity formed for similar purposes. (Note: The definition of Common Area in this Declaration is broader than the definition of "common elements" in the Act.)

Common Area also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirement, and all other property and improvements, if any, declared to be Common Area by this Declaration or by the Declarant or the Association.

Section 10. "Common Expenses" shall mean and refer to: (i) all expenses of maintenance of Common Area, including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Area or other assets owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional *ad valorem* taxes on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other Persons employed by the Association for Association business; (v) expenses declared to be or described as Common Expenses by the Act, the Code or this Declaration, including expenses for Stormwater Control Measures; (vi) expenses determined by the Board or by the Members to be Common Expenses; and (vii) all other expenses incurred

BK012650PG01615

by the Association in performing its functions, including operating, management and administrative expenses.

Section 11. "Condominium" shall mean and refer to any portion of the Properties on which a Condominium has been created pursuant to the North Carolina Condominium Act (Chapter 47C of the North Carolina General Statutes), as from time to time amended, or any successor thereto. "Condominium Unit" shall mean and refer to a physical portion of the Condominium designated for separate ownership or occupancy. See N.C.G.S. §47C-1-103(25).

Section 12. "Club" shall mean and refer to the recreational and social club to be known as Twelve Oaks Club to be located on the Club Property, as more particularly described elsewhere in this Declaration.

Section 13. "Club Facilities" shall be the facilities developed within the Club Property, including, without limitation the Golf Course, a clubhouse with exercise facility, tennis courts and swimming pools.

Section 14. "Club Owner" shall mean and refer to the entity owning the Club and the Club Property, which, as of the date hereof is **TWELVE OAKS, L.L.C.**, a Virginia limited liability company, its successors and assigns.

Section 15. "Club Property" shall mean and refer to a certain property adjoining the Development on which the Club will be developed and located, the boundary lines of which Club Property shall be shown on a recorded plat or plats of the Development and shall contain the Golf Course. Club Property shall not be part of the Development or the Property as hereinafter defined, and shall not be subject to the terms and provisions of this Declaration.

Section 16. "Declarant" shall mean and refer to **TWELVE OAKS, L.L.C.**, a Virginia limited liability company. It shall also mean and refer to any Person to whom or which Declarant might assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Registry.

Section 17. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2020;
- (b) the date on which Declarant no longer owns any property within the Community or any of the Property included on **Exhibit B** attached hereto;
- (c) Relinquishment or transfer by Declarant of all Special Declarant Rights as provided in §47F-3-104 of the Act; or
- (d) Declarant files with the Secretary of the Association a signed document relinquishing Declarant's right to unilaterally appoint officers and directors of the Association as provided in Section 3 of Article III hereof.

BK012650PG01616

Section 18. "Declaration" and "Master Declaration" (the terms being used interchangeably) shall mean and refer to this "Master Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Twelve Oaks", and all amendments thereto and supplements thereof.

Section 19. "Development Parcel" shall mean and refer to any portion of the Properties that has not been subdivided into Lots and is not Common Property, or Sub-Association Common Property, or Exempt Property. The Owner of a Development Parcel, within fifteen (15) days after recording any plat of any portion of a Development Parcel that subdivides it into Lots or otherwise, shall provide a copy of such recorded plat (including plans and plats related to the establishment of a Condominium) to the Association and, during the Declarant Control Period, to the Declarant. Typically, when a Development Parcel is improved without being subdivided into Lots on which Detached Dwellings or Townhouse Dwellings are to be constructed, it usually will consist of a Condominium or Apartment Units.

Section 20. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots, attached dwellings located on separate Lots (for example, townhomes, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot, and Condominium Units. A detached or attached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor. A Condominium Unit shall be deemed to constitute a Dwelling upon the later of (i) issuance of a certificate of occupancy for the Unit, or (ii) recordation of the Declaration of Condominium (or supplement thereto), plat and plans creating that Condominium Unit.

Section 21. "Exempt Property" shall mean and refer to all portions of the Properties included within any of the following categories: (i) Common Property; (ii) Sub-Association Common Property; (iii) property owned by, or dedicated to and accepted by the Town or a public utility, including property within the right-of-way of publicly-dedicated streets and roads; (iv) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided, however, that any property containing a Dwelling used as a residence shall not be Exempt Property.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the Town or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, shall be exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the Town or any other Person.

Exempt Property that loses its status as Exempt shall be reclassified as a Lot or Development Parcel, as appropriate, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots and Development Parcels.

BK012650PG01617

Section 22. "Golf Club" shall mean and refer to the property intended to be developed as Twelve Oaks Golf Community golf course and its related facilities, as well as in general to the golf course owners and operators. The property comprising the Golf Club shall consist of a portion of the Properties and shall be specifically delineated on Recorded Plats if and when established and may be enlarged, reduced, or relocated as necessary from time to time. Any property added to the Golf Club shall be deemed to governed as Golf Club property hereunder, and any property changed from Golf Club to non-Golf Club property shall be deemed to be governed as non-Golf Club property hereunder without need for specific amendment to this Declaration and regardless of when such property is designated as Golf Club or non-Golf Club property.

Section 23. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Wake, the Town of Holly Springs, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Section 24. "Limited Common Area" and "Limited Common Property" (the terms being used interchangeably) shall mean and refer to all Common Property, together with any improvements thereon, owned, leased, used or maintained by the Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association. Limited Common Property may include, for example, private alleys and Stormwater Control Measures serving less than all of the Properties.

Section 25. "Limited Common Expense" shall mean and refer to all expenses of the type included within the term "Common Expense" but which are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments levied only against the portions of the Properties benefited by Limited Common Property.

Section 26. "Lot" shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot intended to be used for construction thereon of a detached or attached Dwelling shall become a Lot upon recording in the Registry of a plat creating such Lot. A Condominium Unit shall be deemed a "Lot" upon recording in the Registry of the plat and plans creating said Unit. Notwithstanding the foregoing, a Development Parcel (whether or not shown on a recorded plat) shall also be considered a Lot, and the Owner thereof shall be a Member of the Association with respect to such Parcel. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly platted lot thereafter shall constitute a Lot.

Section 27. "Member" shall mean and refer to every Person who or which holds membership in the Master Association.

BK012650PG01618

Section 28. "Neighborhood" shall mean and refer to each separately developed residential area within the Properties which has been designated as such on one or more recorded maps of portions of the Properties and which has been subjected to this Declaration at the time of recording or by Supplemental Declaration as provided in Article II hereof. In the sole discretion of Declarant, a Neighborhood may (or may not) be part of a Sub-Association and the Lots therein subject to a Sub-Association Declaration, and may be subjected to a Subdivision Declaration.

Section 29. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding contract purchasers and trustees and secured parties having an interest in a Lot solely as security for the performance of an obligation.

Section 30. "Person" shall mean and refer to any natural person, trust, corporation, association, partnership, limited liability company, joint venture or any other legal entity, whether public or private.

Section 31. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 32. "Registry" shall mean and refer to the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded. Any reference herein to a plat or document being recorded refers to such plat or document being recorded in the Registry.

Section 33. "Special Declarant Rights" shall mean and refer to all rights granted to, or reserved by, or established for the benefit of, Declarant in this Declaration, the Articles of Incorporation and Bylaws of the Master Association (whether or not such rights are referred to as Special Declarant Rights in such documents). Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein.

Section 34. "Stormwater Agreement" (which term includes any other agreement, maintenance manual or other document, by whatever name, relating to Stormwater Control Measures) shall mean and refer to any agreement required by the Code between or among any combination of the Town, the Declarant, the Association (or Sub-Association), and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 35. "Stormwater Control Measures" shall mean and refer to any one or more of the following that serves or benefits any part or all of the Properties or is required by the Code or other Legal Requirement in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) storm water drainage easements (also referred to herein as "storm water easements" or "drainage easements") that are shown on plats of the

BK012650PG01619

Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Property or benefit or serve more than one (1) Lot; and (ii) storm water management facilities for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and storm water management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing storm water. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Property, Limited Common Property or Sub-Association Common Property, as applicable, and maintenance of Stormwater Control Measures is a Common Expense, Limited Common Expense, or Sub-Association Common Expense, as applicable. References in the Declaration to storm water management include all applicable Stormwater Control Measures and Stormwater Agreements.

Section 36. "Sub-Association" shall mean and refer to a North Carolina nonprofit corporation or other entity organized for the purpose of owning, managing and/or maintaining that Sub-Association's Common Property (including, with regard to a condominium, its common elements) and including, without limitation, a property owners' association in a portion of the Properties containing townhomes or condominiums. Assessments imposed upon the Members of the Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Properties thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by this Master Declaration.

Section 37. "Sub-Association Common Area" and "Sub-Association Common Property" (the terms being used interchangeably) shall mean and refer to portions of the Properties owned or maintained by a Sub-Association for the use, enjoyment and/or benefits of its members. All private streets and open space owned by, or under the jurisdiction of, a Sub-Association are Sub-Association Common Property. "Sub-Association Limited Common Property" and "Sub-Association Limited Common Area" are defined as Sub-Association Common Property that is established for the benefit of fewer than all of the Members of the Sub-Association or less than all of the property subject to the jurisdiction of the Sub-Association.

Section 38. "Sub-Association Declaration" shall mean and refer to a declaration or supplemental declaration recorded in the Registry and applicable solely to Owners, Lots and Sub-Association Common Property within the jurisdiction of a Sub-Association. During the Declarant Control Period, no Sub-Association Declaration shall be recorded without the prior written consent of Declarant, as evidenced by Declarant's execution of same. *See also* Section 7 of Article III hereof.

Section 39. "Town" shall mean and refer to the Town of Holly Springs, North Carolina, a municipal corporation.

BK012650PG01620

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF
THE TWELVE OAKS MASTER ASSOCIATION, INC.**

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

Section 2. Additions to Existing Property.

(a) **By Declarant.** At any time during the Declarant Control Period, Declarant may annex Additional Property to this Declaration, without approval of any Person other than the Town (if required by the Legal Requirements), by recording a "Supplemental Declaration" extending the operation and effect of this Declaration to such Additional Property. Except to the extent required by the Legal Requirements, nothing in this Declaration shall be deemed to require the Declarant to annex any Additional Property.

(b) **By the Members.** If a Person other than the Declarant desires at any time to subject Additional Property to the Declaration, such Additional Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Association for which the notice of meeting includes notice of the proposal to annex such Additional Property and the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation may be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration.

(c) **Approval by Governmental Entities.** Annexations of Additional Property to the Declaration must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval, provided, however, that the real property described on Exhibit B is part of the property approved by the Town as of the date of execution of this Declaration, and the property described on Exhibit B may be annexed by Declarant without further approval of any Person, except for any additional approval required by the Town.

(d) **Supplemental Declaration.** Each Supplemental Declaration shall be effective to annex Additional Property only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Supplemental Declaration shall describe the Additional Property annexed and indicate that the Additional Property is being subjected or annexed to the Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to subject or annex such Additional Property. Any

BK012650PG01621

Supplemental Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Additional Property, not in conflict with this Declaration, as the Person annexing such Additional Property to the Declaration may determine, but this Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with this Declaration. Each Supplemental Declaration shall have been approved in writing by the Declarant prior to recordation.

(e) Votes Allocated to Additional Property. The votes of the Members in the Additional Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Declaration. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Property in Additional Property. Common Property, if any, located within any Additional Property, or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV of the Declaration.

Section 4. Withdrawal of Properties from the Declaration. Subject to Legal Requirements, at any time during the Declarant Control Period, the Declarant, in its sole discretion, without the approval or joinder of the Association, any Owner or any other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from the Declaration. All portions of the Properties withdrawn from the Declaration shall be identified in the withdrawal declaration either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date (if any) specified therein. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if, at the time of such withdrawal, FHA and/or VA regulations require such approval.

After the end of the Declarant Control Period, and subject to Legal Requirements, at any time and from time to time one or more portions of the Properties may be withdrawn from the Declaration upon approval by the Owner of such portion of the Properties and by the affirmative vote of at least sixty-seven percent (67%) or more of the votes cast by the Members present at a duly-called meeting of the Members for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties from the Declaration. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if, at the time of such withdrawal, FHA and/or VA regulations require such approval.

Following approval of any such withdrawal, the Association and the Owner of the portion of the Properties to be withdrawn from the Declaration shall record a withdrawal declaration particularly describing the withdrawn portions of the Properties by reference to a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective

BK012650PG01622

on the date the withdrawal declaration is recorded in the Registry, or on such later date (if any) specified therein.

Section 5. Effect of Withdrawal. Any portion of the Properties that is withdrawn from the Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Declaration on the date the withdrawal becomes effective as provided herein, except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats or documents recorded in the Registry, shall remain effect unless released or terminated by all Persons having rights to exercise such easements.

Section 6. Sub-Association Declaration. Within the Properties there will be certain separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwelling Units, marketing considerations and other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Sub-Association Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Sub-Association Declarations as the Declarant or other Person, in his, her or its sole discretion, may from time to time determine, provided, however, that, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Sub-Association Declaration unless the Declarant consents in writing thereto by executing such Sub-Association Declaration. More than one phase, section or subdivision may be subjected to the same Sub-Association Declaration. Any Sub-Association Declaration may do any one or more of the following: (i) create and regulate the use of and assessments for Limited Common Area; (ii) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or subdivision that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified in the Declaration; and (iii) may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Sub-Association Declaration may determine (provided, however, the provisions of the Declaration control over any conflicting provisions of any Sub-Association Declaration). Except for the foregoing matters that may be different in a Sub-Association Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Sub-Association Declaration that conflicts or is inconsistent with the Declaration.

Section 7. Neighborhood Declaration. There will be within the Properties separate and distinct phases, sections, or Neighborhoods which may have varying Lot sizes, types of Dwelling Units, marketing considerations, and other differences, and Declarant may deem it desirable to impose additional and different covenants and restrictions on such phases, sections or Neighborhoods, applicable solely to such phase, section or Neighborhood (the foregoing being referred to herein as a "Neighborhood Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or Neighborhood may subject such phase, section or

BK012650PG01623

Neighborhood to such Neighborhood Declarations as the Declarant or other Person, in his, her or its discretion, may from time to time determine, provided, however, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or Neighborhood to a Neighborhood Declaration unless the Declarant consents in writing thereto. More than one phase, section or Neighborhood may be subjected to the same Neighborhood Declaration. Any Neighborhood Declaration also may do any one or more of the following: (i) create and regulate the use of and assessments for Limited Common Area; (ii) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or Neighborhood that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified herein; and (iii) may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with this Master Declaration, as the Person subjecting such real property to the Neighborhood Declaration may determine (provided, however, the provisions of this Master Declaration control over any conflicting provisions of any Neighborhood Declaration). Except for the foregoing matters that may be different in a Neighborhood Declaration from the requirements in this Master Declaration, this Master Declaration shall control over any provision of any Neighborhood Declaration that conflicts or is inconsistent with this Master Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. The Club Owner shall not be a Member or have voting rights in the Association.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be four (4) classes of membership with respect to voting rights:

(a) **Class A Members.** Class A Members shall be the Owners of all Lots except Development Parcels and those owned by the Declarant or a Builder. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person owns an interest (other than a security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members are "Class A Lots".

(b) **Class B Member.** The Class B Member shall be the Declarant. A Lot owned by the Class B Member shall be a "Class B" Lot. Subject to the provisions of this subsection, Declarant shall be entitled to ninety-nine (99) votes for each Lot that it owns.

BK012650PG01624

(c) Class C Members. Class C Members shall be the Builders who own Lots within the Properties, and each Lot owned by a Builder shall be a "Class C" Lot. Class C Members shall have one (1) vote for each Lot owned.

(d) Class D Members. Class D Members shall be the Owners of Development Parcels. Class D Members shall be entitled to one (1) vote for each acre of each Development Parcel owned by such Owner.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, Declarant will exercise its right to appoint and remove all of the Directors and officers of the Association, until the earlier of the expiration of the Declarant Control Period or Declarant surrenders such right by written instrument filed with the Secretary of the Association. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his/her own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant or rental Units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant or a Builder.

ARTICLE IV PROPERTY RIGHTS

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

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

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Property and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Common Property providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such

BK012650PG01625

conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Property without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Property shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the Association, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Property for other property and consideration provided that:

(i) written notice of the exchange is given to each Member of the Association, except in cases where the exchange is done to eliminate an encroachment;

(ii) after the notice is given, if required, the Association approves the exchange, except when the purpose of the exchange is to eliminate an encroachment, in which case the Board may approve the exchange without vote of the Member;

(iii) the exchanged properties and other considerations are of like value and utility;

(iv) the acreage and configuration of the remaining open space (including real property to be received by the association in such exchange) equals or exceeds the requirements of the Code; and

(v) the exchange is approved by the Town, if required.

Section 2. Delegation of Use.

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

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

BK012650PG01626

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

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that it will convey to the Association title to those portions of the Common Property to be owned in fee by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its successors and assigns, an easement over, under, across and through the Common Property so long as it owns any Lot within the Properties or any property described in **Exhibit B** to this Declaration, for the purpose of constructing any improvements on the Common Property and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Community, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Community, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Property by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Town or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Property and Common Property Easements. It is the intent of Declarant that the Common Property (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Community. To that end, the Declarant, by recording any plat or map of any phase or section of the Properties, grants to the Association an easement over and across any portion of any Lot within such phase or section on which a Common Property Easement lies for the purpose of enabling the Association to take any action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Property Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Property Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association: (i) remove any trees or vegetation from any Common Property; (ii) erect gates, fences, buildings or other structures on any Common Property; (iii) place any garbage receptacles on any Common Property; (iv) fill or excavate any Common Property or portion thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance and preservation of the Common Property.

It is the intent of the Declarant that a Common Property Easement be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Property Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the

BK012650PG01627

right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner for the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be deemed a special assessment against such Owner's Lot and shall be collected in and shall incur the late charges, interest and costs of collection as set forth in Section 8 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Property is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Property in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration and the rules and regulations adopted by the Association as provided herein and in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Property Easement lies, resulting from use of the Common Property; and (iii) pay all property taxes and other assessments levied against the Common Property owned in fee by the Association.

(c) Association's Right of Entry. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Property Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and maintain the Common Property Easement and any improvements therein, including maintenance to be done by the Owner as provided in subsection (a) above, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

Section 5. Services to Lots Served by Private Streets or Alleys (UDO §7.07.B.22). The Association or the applicable Sub-Association shall provide, or cause to be provided, the following services to any Lot served by a private street or alley, all according to procedures and policies established by the Association or, if applicable, the Sub-Association: regular trash pick-up, leaf pick-up, snow removal, daily mail delivery according to the schedules and policies of the U.S. Postal Service, maintenance and repair of the private streets and/or alleys providing access to the Lot including, but not limited to, to the extent required by the Town of Holly Springs to be installed, driving surface, street or alley subgrade, surface and subsurface drainage, curbs, sidewalks, street lights, street name signs, traffic control signs, and traffic control signals. As provided in Section 13 of Article V hereof, the Association or applicable Sub-Association shall establish a separate reserve fund for maintenance and repair of the foregoing.

Section 6. Association's Right to Establish Enforce Speed Control and Parking Regulations. The Association shall have the right to establish and amend from time to time speed limits for travel on private streets and alleys and rules for parking on and use of private streets and alleys. The Association shall have the right to enforce all such speed limits and rules in the same manner as any other violation of this Declaration and any other rules and regulations of the Association including, without limitation, imposition of monetary fines as provided in Section 6 of Article XIII of this Declaration.

BK012650PG01628

ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments, special assessments, limited special assessments, social membership assessments and, to the extent applicable, other Club assessments, each to be established and collected by the Association and/or the Club as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all cost of collection, including, without limitation, reasonable attorneys' fees, shall be a charge on the Lot of such Owner, and, as provided in §47F-3-116 of the Act, shall be a continuing lien against the Lot against which such assessment is made. As provided in §47F-3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, shall also be the personal or corporate obligation of the Person owning such Lot at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them; however, such assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made. Notwithstanding the foregoing, the Club Owner shall have no obligation to pay assessments set forth herein with respect to the Club Property.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents of the Community and, in particular, for (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Property; (ii) maintenance, repair and reconstruction of the Common Property and improvements thereon including, without limitation, storm water drainage facilities thereon, and including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of assessments, if any, levied against the Association by the Master Association; (iv) payment of taxes and public assessments levied against Common Property owned in fee by the Association; (v) procurement of insurance; (vi) employment of attorneys, accountants, management agents and other Persons for Association business; (vii) payment of principal and interest on funds borrowed by the Association; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2007, the Maximum Annual Assessment shall be Six Hundred Dollars (\$600.00) for each Class A Lot. The Maximum Annual Assessment for Class C Lots shall always be one-half (1/2) of the Maximum Annual Assessment for Class A Lots. The Maximum Annual Assessment for a Development Parcel shall be Ten Dollars (\$10.00) per acre of such Development Parcel. The Maximum Annual Assessment for Class B Lots and Development Parcels owned by the Class B Member shall be zero.

BK012650PG01629

(a) Beginning on January 1, 2008, and on January 1 of each year thereafter, the Maximum Annual Assessment for Class A Lots and Development Parcels shall automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous calendar year.

(b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by the Declarant and by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessment; Certificate of Payment; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots and Development Parcels at any amount not in excess of the Maximum Annual Assessment then in effect. Unless a lower amount is set by the Board, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. The annual assessment for Class B Lots and Development Parcels owned by the Class B Member shall always be zero and the annual assessments for Class C Lots shall always be one-half (1/2) of the assessment for Class A Lots, provided, however, that any Lot which contains a dwelling occupied by any Person as a residence shall be assessed at the Class A rate. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

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

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for

BK012650PG01630

annual assessments not in excess of the Maximum Annual Assessment, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Section 5. Social Membership Assessments. All Owners in the Development shall be social members in the Club and shall be assessed the annual social membership fees (the "Social Membership Assessment") as determined by the Club Owner, which fees shall be used to pay for the improvement, use, operation, repair, replacement, and maintenance of certain of the Club Facilities, as determined by the Club Owner. Each Owner of a Lot or Dwelling Unit, by acceptance of a deed or other conveyance thereof, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot or Dwelling Units), to pay to the Association (or to any Person which may be designated by the Association to receive such monies on behalf of the Association), in addition to the other assessments listed in this Article, Social Members Assessments as set forth herein. Where the Declaration refers to assessments generally such provisions shall include the Social Membership Assessment, including but not limited to provisions regarding the creation of liens and personal obligations for assessments, and remedies for non-payment as set forth in this Declaration.

The amount of the annual Social Membership Assessment shall be established by the Club Owner as of January 1st of each year. The Social Membership Assessment may be collected on a monthly, quarterly, annual or other basis, as determined by the Club Owner, and may be collected in advance. The rights, privileges and obligations of social members related to use of the Club Facilities shall be set forth in a separate document to be prepared by the Club Owner. The Social Membership Assessment for Class C Lots which are not occupied by any Person as a residence shall be one-half (1/2) of the Social Membership Assessment for Class A Lots. In no event shall Declarant be obligated to pay any Social Membership Assessment.

Section 6. Special Assessments: Limited Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring cost, *provided that* any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and further provided that the special assessments for Class B Lots and Development Parcels (regardless of the identity of the Owner thereof) shall always be zero and the special assessments for Class C Lots shall always be one-half (1/2) of the special assessment for a Class A Lots. Special Assessments shall not be applicable. Special assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors.

The Board of Directors may, without vote of the Members, levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association

BK012650PG01631

with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 7. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than forty-five (45) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting maybe called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 8. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is less, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due, and shall have the right and power to take such action as is necessary to conduct such foreclosure and convey the Lot to the purchaser at the foreclosure sale, including, without limitation, the right to appoint a trustee or to request appointment of a commissioner to conduct the foreclosure. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or by abandonment of his Lot.

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

Section 10. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-fourth (1/4) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or serviced deemed by the Board to

BK012650PG01632

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

Section 11. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time or by the Declarant for or on behalf of the Association shall be credited against past or future assessments due from the Declarant.

Section 12. Neighborhood Assessments. Subject to the provisions of this Section 11 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments (deemed to be limited special assessments) against the Lots in a particular Neighborhood which is not subject to a Sub-Association Declaration to fund actual and estimated expenses incurred by the Association for the primary benefit of the Lots within such Neighborhood including, without limitation, maintenance required to be performed by the Association with respect to property within that Neighborhood. The Association shall levy Neighborhood Assessments within a Neighborhood as provided in a Neighborhood Declaration applicable to such Neighborhood, or upon the written request of Owners of at least two-thirds (2/3) of the Lots within that Neighborhood.

Section 13. Reserve Funds. From the annual assessments and working capital assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for working capital, contingencies, and acquisition and replacements of Common Property, including, without limitation, to the extent not maintained by a Sub-Association or an Owner, a separate reserve fund for maintenance and repair of private streets, private alleys, and interior access drives and driveways. Reserve funds are subject to the following:

(a) Extraordinary expenditures not originally included in the annual operating budget, including (i) major rehabilitation or repair of the Common Property, (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, or (iii) the initial costs of any new service to be performed by the Association, first shall be charged against the appropriate reserves. Except for expenses of normal and routine maintenance included in the annual operating budget, all expenses for repair or replacement of the Common Property first shall be charged against appropriate reserves.

(b) If reserve funds become excessive, as determined by the Board, the Board may adjust the reserve funds by reallocation to other annual operating budget items or by applying excess amounts as credits against annual assessments, or by refunding the excess amount to the then Owners.

BK012650PG01633

ARTICLE VI MAINTENANCE OF LOTS AND COMMON PROPERTY

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Property is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) to the extent the same is not maintained by a Sub-Association, maintain the Common Property in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Property lies, resulting from use of the Common Property; and (iii) pay all property taxes and other assessments levied against all Common Property owned in fee by the Association.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 1 of this Article VI, the cost of any such maintenance, replace or repairs (including the administration fee) shall be assessed against the Lot upon which such maintenance is done and shall be added to and become a limited special assessment against such Lot.

Section 4. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Declaration or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, the Town), the Association shall maintain the Stormwater Control Measures as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to the Declaration. Such maintenance obligations shall terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the Town accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Properties, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement with the Association which may require

BK012650PG01634

monetary payments to such Person by the Association). Following any such assumption of maintenance by the Town or other Person, the Association may, without obligation, continue to provide maintenance to the extent that, in the opinion of the Board, the Town or other Person fails to provide adequate maintenance, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town or such other Person has not assumed maintenance responsibility, or following termination of the Town's or such Person's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measures are located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which Stormwater Control Measures are located shall not obstruct or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all Stormwater Control Measures located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures.

Declarant, during the Declarant Control Period, and thereafter, the Association, subject to any approval required by the Town, may at any time and from time to time grant, relocate, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, unless the stormwater drainage easement is shown on a previously recorded plat of such portions of the Properties, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, may grant the stormwater drainage easement by written instrument; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the stormwater drainage easement then is located or the portions of the Properties served thereby, or if it does have such material adverse effect it is consented to in writing by the Owners of all portion of the Properties on which such stormwater drainage easement is located and which are served thereby; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements and agreements, including Stormwater Agreements, executed by the Association (or, during the Declarant Control Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Declarant Control Period, the Declarant on

BK012650PG01635

behalf of the Association) may enter into agreements, including Stormwater Agreements, with the Town, another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties. Such agreements, including Stormwater Agreements, shall be binding on all Owners (or, with respect to Limited Common Property, all Owners to whose portion of the Properties such Limited Common Property is allocated), and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by the Town, such other association or such other Person in inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such agreements, including Stormwater Agreements, may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Declarant Control Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures. Provided, however, during the Declarant Control Period no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town, in fulfilling its obligations under the Declaration the Association (or, during the Declarant Control Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different agreements, including Stormwater Agreements, for different portions of the Properties, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures and/or agreements, including Stormwater Agreements, are determined to be necessary or desirable, that the costs of maintaining such Stormwater Control Measures and/or funding such agreements, including Stormwater Agreements, may be different for different portions of the Properties, some Stormwater Control Measures may be classified as Limited Common Property or Sub-Association Common Property, and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties, and such differences may be classified as Limited Common Expenses under the Declaration or Sub-Association Common Expenses under a Sub-Association Declaration.

BK012650PG01636

Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional stormwater assessment may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

Declarant, at any time and from time to time, may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements, including Stormwater Agreements, entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the agreement, including Stormwater Agreements, being assigned to the Association. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of agreements, including Stormwater Agreements, with the Town or other Persons and the granting of easements to the Town or other Persons.

ARTICLE VII RIGHTS OF LENDERS

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

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

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

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

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

BK012650PG01637

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

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of first deeds of trust who have requested notice as provided in Section 2 above have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof, shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association;

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

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

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Property for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners of the Association.

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

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under this Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water lines, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or

BK012650PG01638

quasi-public utility installations are reserved as shown on the recorded maps of the Properties. The Association may reserve and grant easements over the Common Property as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the front and rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

An easement is also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Properties shown and designated as "sign easement", "landscape easement" or "drainage easement", or any similar designation, and any combination of the foregoing on any recorded map or plat of the any portion of the Properties for the purpose of installing, operating, repairing and maintaining, as appropriate, landscaping, irrigation system, entrance signage, fencing and Stormwater Measures in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing, or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article IX of this Declaration and, if required, by the Town.

Declarant grants to and reserves for the Declarant, the Association, the Town and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the Person taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Lot or Unit shall be burdened with an easement of support for the benefit of such adjoining Lot or Unit.

Section 3. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Property, and such encroachment was not

BK012650PG01639

caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Property or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Property encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Property. A perpetual, nonexclusive easement over, under and through the Common Property is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Property and for utilities serving such Lot. Any conveyance or encumbrance of such Common Property is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Community, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors or of the manager employed by the Association, creates or may create an imminent danger to the Common Property or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Property and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 7. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant, its successors and assigns, to develop the Properties and construct improvements thereon.

Section 8. Easement Regarding Golf, Tennis, or Other Recreational Use. Declarant, the Club's members, employees, and visitors to the Club and Club Facilities shall have a perpetual, non-exclusive easement in their favor to use the Roadways (other than Roadways that are public streets) and entranceways and other Common Areas as necessary during any use of the Club Facilities, including the Golf Course or tennis courts, or as a spectator, worker, or purveyor at or for any tournament or activity in connection therewith for purposes of ingress, egress and access to such facilities. With respect to public streets, Declarant, the Club's members,

BK012650PG01640

employees, and visitors to the Club and Club Facilities may acquire licenses pursuant to encroachment agreements with the Town, for such purposes subject to the requirements and procedures of the Town. In addition, Declaration hereby dedicates and reserves for the benefit of the Club, its members, visitors, agents, and employees, non-exclusive perpetual easements over, across and under certain portions of the Property, indicated and shown on the plats of the Development as being reserved as easements for the benefit of the Club or the Golf Course (for example, labeled as "Golf Course Easement" or "Easement for Golf Cart Tunnel"), for the following purposes, including the installation, maintenance, repair and removal thereof:

- (a) rights-of-way for pedestrian access, ingress and egress to and from the Golf Course; and
- (b) rights-of-way for golf cart, golfing individuals and maintenance vehicle access, ingress and egress to and from the Golf Course.

Any disputes as to the extent of any of the above-described easements during the term of this Declaration shall be determined by Declarant in its sole and absolute discretion. Declarant reserves the right to impose upon the Property such other easements as are required for the enjoyment of the Club, golf, tennis or other facilities. Notwithstanding anything to the contrary set forth in this Declaration, for so long as required by the Town, Declarant and/or the Association shall enter into separate encroachment agreements with the Town which shall be recorded in the Register of Deeds for Wake County and shall govern the use of any golf course easements and/or encroachments over public street rights-of-way.

Section 9. Easements for Errant Golf Balls; Limitation of Liability. The Common Area is hereby burdened with an easement in favor of any golfer for the purpose of retrieving errant golf balls. No Person may enter onto any Lot or any portion of the Properties other than the Common Area to retrieve errant golf balls or for any other reason without the prior consent of the Owner of such Lot or portion of the Properties. The Association shall not be responsible or liable in any way for any disputes between an Owner and any person using the Golf Course. All Owners, by acceptance of delivery of a deed to their respective Lot, Dwelling Unit, tract or other portion of the Property, for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, assume all risks associated with errant golf balls, including personal injury and property damage and all Owners agree and covenant for themselves, their contractors, subcontractors, guests and invitees, successors in interest and assigns, not to make any claim or institute any action whatsoever against Declarant, the Association, the Club, the Club Owner, the architect of the Golf Course, or any officers, directors, employees, agents or affiliates of any of them, or their respective assigns, arising or resulting from any errant golf balls or any damages that may be caused thereby.

BK012650PG01641

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$250.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Community.

Declarant may, at any time, delegate the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period.

Any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the Town or appropriate governmental entity for the Dwelling constructed on a Lot.

BK012650PG01642

ARTICLE X USE RESTRICTIONS

Section 1. Land Use and Building Type. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the Town, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit another Person to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Community and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the zoning ordinance of the Town (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Fences. Any fence or wall installed within the Community must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IX of this Declaration. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots or to any fence installed by the Declarant at any entrance to or along any street within the Community.

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

Section 5. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface, unless another surface is approved in writing by the ARB.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as

BK012650PG01643

"campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Community. No boat, boat trailer, or any other trailer shall be parked on any street within the Community. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Property, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of this Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Community or the Common Property, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Section 6. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board has the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on the Common Property at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Property.

Section 7. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 8. Signs. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, not more than two (2) signs of not more than six (6) square feet advertising the property for sale or rent, and not more than two signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than forty-five (45) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed on the Common Property without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Property in connection with the development and sale of the Properties.

BK012650PG01644

Section 9 **Antennas; Satellite Dishes.** No television, radio or other electrical towers, aeriels, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, §1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article IX of the Declaration.

Section 10. **Swimming Pools.** No above-ground swimming pools are permitted in the Community, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 11. **Mailboxes.** No mailbox, other than community standard mailboxes specified by the Declarant, shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of this Declaration.

Section 12. **Maintenance of Lot and Improvements; Construction.** As more fully provided in this Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public

BK012650PG01645

streets free abutting his Lot from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

Section 13. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the house in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to the approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant or, with the approval of the Declarant, by an Approved Builder during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Community.

Section 14. Leasing of Dwellings. An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, be in writing, and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Master Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Twelve Oaks, recorded in the Wake County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

Section 15. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of this Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

BK012650PG01646

Section 16. Street Lighting. Declarant reserves the right to subject the Community to a contract with Progress Energy for installation and operation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer or by the Association.

Section 17. Irrigation. Declarant has entered into an agreement with the Town to permit the use of reclaimed water from the Town's treatment plant for irrigation in the Community, and distribution lines for such reclaimed water are installed within street rights-of-way within the Properties. Accordingly, no Owner may install or permit to be installed any sprinkler or irrigation system within the Properties unless such system uses only reclaimed water and is connected only to the reclaimed water distribution system.

ARTICLE XI THE CLUB AND GOLF COURSE

Section 1. Owner's Covenants. With respect to the Club, the Club Property and the Golf Course, the Owners of any property in the Development shall be subject to the additional covenants set forth in this Article.

Section 2. The Club. The Club Property is being developed by Declarant as a for-profit club and recreational area in conjunction with the development of the Property. Declarant or other parties may from time to time develop the Club Facilities within the Club Property. The Club Facilities shall be developed and provided at the discretion of the Declarant. The Club Owner at any particular time shall have the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Facilities shall be used, if at all. By way of example, but not limitation, the Club Owner shall have the right to approve users and determine eligibility for use of the Club Facilities, to transfer any or all of the Club Facilities or the operation thereof to anyone (including, without limitation, a member-owned or equity club and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, dues and other charges for use privileges.

The Club Property is not part of the Property and is not subject to the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration. The Club, the members of the Club, their visitors, guests and invitees shall have certain perpetual non-exclusive easements over the Property as set forth in this Declaration; provided however, such easements, as they relate to the use of the Common Areas by the Club or its Members, their visitors, guests and invitees may increase the number of people using the Common Areas. Any disputes as to what constitutes a normal purpose or what portions of the Common Areas are necessary for such persons' use shall, during the term of this Declaration, be determined by Declarant in its sole and absolute discretion. Declarant, and upon termination of the Class B Membership, the Association, reserves the right, and in its sole discretion and with no other approval being required (except as may be required by the Town), to impose upon the Common Areas such other easements which are required for the use and enjoyment of the Club Property. The location of a Lot or Dwelling Unit within the Property may result in nuisances or hazards to such Lot or Dwelling Unit, or to persons on, making use of or in transit to or from such Lot or

BK012650PG01647

Dwelling Unit, or to property on such Lot or Dwelling Unit, as a result of normal Club or Golf Course operations. Each Owner covenants for itself, its successors in interest and assigns, and its contractors, tenants, subcontractors, guests and invitees that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such Club activities, and shall indemnify and hold harmless the Master Association, any Sub-Association, Declarant, the Club Owner, the Club, the Golf Course, any other entity owning or managing the Golf Course or the Club, and any of their officers, directors, agents or employees, from any and all liabilities, claims or expenses, including attorney's fees and expenses arising from such property damage or personal injury. Nothing in this Article shall restrict or limit any power of the Declarant, the Club Owner or any entity owning or managing the Golf Course to change the design of the Golf Course, and such changes if any, shall not nullify, restrict or impair the covenants contained herein.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE CLUB NOR ANY OF THE CLUB FACILITIES WILL BE COMMON AREA OR PROPERTY SUBJECT TO THIS DECLARATION, AND THE OWNERSHIP OF A LOT, DWELLING UNIT, OR TRACT AND/OR MEMBERSHIP IN THE ASSOCIATION OR ANY SUB-ASSOCIATION DOES NOT IN ANY WAY CONFER ANY OWNERSHIP INTEREST IN OR ANY EASEMENT OR RIGHT OF USE IN THE CLUB, THE CLUB PROPERTY, OR ANY CLUB FACILITY OR AMENITIES, AND NO SUCH INTEREST, RIGHT, EASEMENT, OR RIGHT OF USE IS CREATED UNDER THIS DECLARATION BY IMPLICATION OR OTHERWISE. THE CLUB MAY HAVE MEMBERS WHO ARE NOT OWNERS OR MEMBERS OF THE ASSOCIATION OR ANY OTHER ASSOCIATION.

Section 3. Golf Course. While Owners shall have the right of quiet enjoyment to their portion of the Property, there shall be no activity on any Lot, Dwelling Unit or other portion of the Property which is contiguous to the Golf Course or within a distance of fifty feet (50') of any boundary of the Golf Course that unreasonably disturbs play, or the enjoyment of the Golf Course, by members and guests thereof, including, without limitation, undue noise, unsightly trash and debris, or any other noxious or offensive activity. Typical noises and activities associated with normal construction activity on Lots, Dwelling Units or other portions of the Property, shall, however, be permitted.

Section 4. Enforceability. The rights and obligations to implement the enforcement of the provisions of this Article and of those portions of the other covenants, conditions and restrictions herein contained that are directed to the protection and enjoyment of the Club Property, the Golf Course shall be and are hereby delegated to and become the sole responsibility of the Club Owner, its successors and assigns; provided, however, the Board shall also have the right, but not the obligation, to enforce any of the provisions of this Article.

BK012650PG01648

ARTICLE XII DISCLOSURES AND WAIVERS

The following are in addition to any other disclosures and waivers in the Declaration.

Section 1. View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Properties will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Property) has the right to add or remove trees and other landscaping to and from the Common Property at any time and from time to time, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 2. Construction Activities. All Owners and other Persons who use the Properties are hereby placed on notice that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot, a Development Parcel, or other portions of the Properties, such Owners and such other Persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant and its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Properties.

Section 3. Water Management. Each Owner and any other Person who uses any portion of the Properties acknowledges and agrees that any or all lakes, ponds, or wetlands in the Properties may be designed as water management areas and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of storm water, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such Person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner and other such Person releases and discharges Declarant, and its successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees

BK012650PG01649

and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations.

Owners and other Persons who use any portions of the Properties shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the local permitting authority, the City, the Association, the Declarant, the U.S. Army Corps of Engineers (to the extent it has authority), and such other governmental entities as may have relevant jurisdiction over such matters.

Section 4. Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Property and the collection of assessments.

Section 5. Conveyance of Common Property. Declarant may convey or transfer all Common Property, including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to the Common Property and improvements thereon, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy or completeness of the Common Property, or for incidental or consequential damages arising therefrom.

Declarant shall transfer and assign to the Association, without recourse, all warranties received from manufacturers and suppliers relating to any of the Common Property or improvements thereon, or relating to any personal property transferred by Declarant to the Association, which exist at the time of transfer and are assignable, but Declarant's failure to do so shall not constitute any grounds for any claim, cause of action or other legal recourse against Declarant for failing to do so, other than to compel Declarant to transfer or assign same.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by

BK012650PG01650

the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Term: Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of eighty percent of the Members.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots and, during the Declarant Control Period by the Declarant; provided, however, that in no event may Declarant's rights hereunder may be amended or altered without Declarant's prior written consent. For the purpose of this section, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other Person, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Property.

Section 3. Non-Liability of Governmental Entities. Neither the Town nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

The Town shall not be responsible for maintaining any private streets within the Properties, since such streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Association is responsible for maintaining all private streets that are Common Property of the Association.

BK012650PG01651

Section 4. Subdivision of Lots. No Lot within the Community may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Community, except with the consent of the Declarant during the Declarant Control Period, and thereafter of the Association, and, if required, by the Town.

Section 5. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

Section 6. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Property and Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or other restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Property; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Property if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the Architectural Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 7. Condemnation/Casualty. If all or any part of the Common Property and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering

BK012650PG01652

such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Property in lieu of a destroyed club house.

Section 8. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 9. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE TWELVE OAKS
MASTER ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the Twelve Oaks Master Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of ____ votes were cast. ____ votes were cast in favor of such action, and ____ votes were cast against such action. Accordingly, the motion to approve [describe the action approved] was approved by at least ____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

Section 10. Number and Gender. Whenever the context requires, the singular shall include the plural, and vice versa, and one gender shall include all.

Section 11. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

BK012650PG01653

Section 12. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local law, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 13. Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. In the event of any conflict between this Declaration and any Sub-Association Declaration, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. §55A), and the ordinances of the Town shall in all cases control any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Raleigh Town Code.

Section 14. Rules Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47-F-2-102(1) of the Act.

Section 15. Declarant. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant and construction of homes by Declarant so long as said development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 16. Non-Discrimination. Neither the Association, the Board, committee of the Board, officer of the Association, nor any member of the Board or committee, in exercising its/his/her rights and obligations under this Master Declaration or the Articles of Incorporation or Bylaws or Articles of Incorporation, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 17. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Holly Springs Police Department.

(The remainder of this page is intentionally blank.)

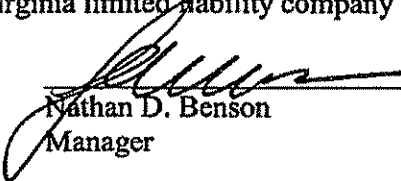
BK012650PG01654

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized Manager, as of the latest date set forth in the notary acknowledgment below.

DECLARANT:

TWELVE OAKS, L.L.C.,
a Virginia limited liability company

By:


Nathan D. Benson
Manager

COMMONWEALTH OF VIRGINIA – CITY/COUNTY OF VIRGINIA BEACH:

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, certify that Nathan D. Benson personally came before me this day and acknowledged that he is a Manager of TWELVE OAKS, L.L.C., a Virginia limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 10th day of July, 2007.

(Notary Stamp or Seal)




Notary Public

Printed Name: Linda J. Todd

My commission expires: 07-31-10

BK012650PG01655

EXHIBIT A

Lying and being in the Town of Cary, Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property shown and described on those certain maps entitled:

- "Subdivision Map Of TWELVE OAKS PUD, Phase 1A" recorded in Book of Maps 2007, Pages 1516-1518, inclusive, Wake County Registry, and
- "Subdivision Map Of TWELVE OAKS PUD, Phase 1B" recorded in Book of Maps 2007, Pages 1585-1589, inclusive, Wake County Registry, and
- "Subdivision Map Of TWELVE OAKS PUD, Phase 1C" recorded in Book of Maps 2007, Pages 1590-1591, inclusive, Wake County Registry,

but SAVING AND EXCEPTING THEREFROM the rights-or-way of public streets shown on said maps.

BK012650PG01656

EXHIBIT B

Lying and being in the Town of Cary, Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property acquired by Declarant by deeds recorded in Book 10998, Page 621, Book 10998, Page 641, Book 10998, Page 646, Book 10998, Page 651, Book 10998, Page 656, Book 10998, Page 661, Book 10998, Page 667, Book 10998, Page 673, Wake County Registry, saving and excepting therefrom the property identified on Exhibit A to this Declaration, and

Any real property acquired by Declarant subsequent to the recording of this Declaration and approved by the Town of Holly Springs for inclusion within the Properties.

BK012650PG01657



BOOK:012650 PAGE:01607 - 01657

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



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ 51 # of Pages

22.004-1/20/06