

WAKE COUNTY, NC 64
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REGISTER OF DEEDS
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR JOHN'S POINTE SUBDIVISION
(a Cluster Unit Development)**

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
EASEMENTS, CHARGES AND LIENS FOR
FOR JOHN'S POINTE SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **DLM Development Group, LLC**, a North Carolina limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 33.39 acres of land located in the City of Raleigh, St. Marys Township, Wake County, North Carolina, being the property acquired by Declarant by deed recorded in Book 10595, Page 624, Wake County Registry, which Declarant is developing into a community known as JOHN'S POINTE (hereinafter the "Subdivision"); and

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

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, the John's Pointe Homeowners Association, Inc., for the purpose of exercising the aforesaid functions.

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

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration, including, without limitation, Article XI hereof.

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

Section 2. "Approved Builder" shall mean and refer to one or more persons or entities in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with the Declarant. At the time of execution of this Declaration, Perry Builders, LLC and Phoenix Builders, Inc. are the only Approved Builders.

Section 3. "Association" shall mean and refer to **JOHN'S POINTE HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 4. "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.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 6. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including, without limitation, the area within any storm water easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority, and water and sewer lines (and the easements associated therewith) which serve more than one Lot and are not located within a public utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility or another nonprofit entity formed for similar purposes. "Common Area Easement" shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest. *See also* Part B of Article XI hereof.

Section 7. "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 and stormwater replacement contribution payments pursuant to the terms and provisions of any Stormwater Agreement applicable to the Properties; (vi) expenses determined by the Board or by the Members to be Common Expenses; and (vii) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses.

Section 8. "Declarant" shall mean and refer to DLM Development Group, LLC, a North Carolina limited liability company. It shall also mean and refer to any person, firm, corporation, limited liability company, or other entity to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in Wake County Registry.

Section 9. "Declarant Control Period" shall mean and refer to the period of time during which Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2009;
- (b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its and the Class C Members' ownership of the newly-annexed Lots and of other Lots owned by them, a sufficient number of votes (at the 9-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 10. "Declaration" shall mean and refer to this "Declaration of Covenants, Restrictions, Easements, Charges And Liens For John's Pointe Subdivision", and all amendments thereto and supplements thereof.

Section 11. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 12. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 13. "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 any equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 14. "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 15. "Unit" or Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether by the Owner of such Unit or by tenants or lessees of such Owner.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

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 by Declarant. At any time prior to the applicable date under Section 3(a), additional lands within the area described on **Exhibit B** attached hereto may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and recording by Declarant of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed, provided that such annexation must be approved, if required, by the City of Raleigh and the Federal Housing Administration and/or Secretary of Veterans Affairs. 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. *See also* Article XI, Part B, Section 8, and Part C, Section 6.

Section 3. Automatic Additions to Existing Property. If not sooner subjected to this Declaration as provided in Section 2 above, Lots and other property identified on **Exhibit B** shall automatically be subjected to this Declaration, without the necessity of recording a supplementary declaration, upon the earlier of the following to occur:

- (a) The later of: (i) the date that is five (5) years after the date on which preliminary subdivision approval for the Subdivision was given by the City of Raleigh or appropriate authority; or
- (b) As to a Lot, by and upon the sale of the Lot to a person or entity other than the Declarant.

Section 4. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner other than Declarant or an Approved Builder, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this 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 or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights.

- (a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant and Approved Builders. 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 leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, may determine; but fractional voting shall not be allowed, and owned by Class A Members shall be "Class A Lots".
- (b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.
- (c) Class C Members. Class C Members shall be all Approved Builders, and Lots owned by a Class C Member shall be "Class C Lots". So long as Class B membership continues to exist, Declarant shall be entitled to nine (9) votes for each Lot owned by a Class C Member, and Class C Members shall have no right to vote. After termination of Class B membership, the Class C Lots shall be converted to Class A Lots for voting purposes, and each Class C Member (not the Declarant) shall be entitled to one (1) vote for each Lot that it owns (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes).

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the Directors and officers of the Association. Declarant's intent to exercise or continue that right should be set forth in the notice of each annual meeting of the Members. 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 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 applied only to Lots and Dwellings owned by Class A and Class C Members and specifically excludes Lots and Dwellings owned by the Declarant.

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

“Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For John’s Pointe Subdivision, recorded in 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.”

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 Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.
- (b) The right of the Association, after notice and an opportunity to be heard as provided in Section 3 of Article IV of the Bylaws, to suspend the voting rights of an Owner and the right of an Owner to use the Common Area 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 public rules and regulations of the Association, provided, however that the Association may not suspend an Owner’s right to use any Common Area providing access, stormwater drainage or utilities to his Lot.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eight percent (80%) of the votes of the entire membership 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 Area 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 Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or another governmental entity (and accepted by same) 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 entire membership 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, as provided in Section 2(c) of Part B of Article XI hereof, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

- (a) Family. The right and easement of use and enjoyment 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.
- (c) Guests. The right and easement of use and enjoyments granted to every Owner by Section 1 of this Article may be delegated by such Owner 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, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner other than Declarant or an Approved Builder, Declarant will convey to the Association title to those portions of the Common Area 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 Area so long as it owns any Lot within the Properties any property described in **Exhibit B** to this Declaration, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by 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 Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the City of Raleigh or other governmental entity, or a public or private utility company.

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

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

It is the intent of the Declarant that a Common Area Easement shall 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 or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with 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 collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 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 Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area 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 or 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 damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.
- (c) Association's Right of Entry for Maintenance of Common Area Easements. 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 Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, 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.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Person Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, and Stormwater Assessments (as provided in Part C of Article XI hereof), such assessments to be established and collected as hereinafter provided. All assessments which remain unpaid for a period of thirty (30) days or longer, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Court for Wake County. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s) or firm(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made. *See also* Section 5 of Part A, Section 9(d) of Part B, and Part C of Article XI hereof.

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

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

Section 3. Maximum Annual Assessment. Until December 31, 2005, the Maximum Annual Assessment shall be \$300.00 for each Class A Lot. The Maximum Annual Assessment for Class B Lots shall be zero and the Maximum Annual Assessment for Class C Lots shall be one-fourth (1/4) of the Maximum Annual Assessment for a Class A Lot.

- (a) Beginning on January 1, 2006, and on January 1 of each year thereafter, the Maximum Annual Assessment for Class A Lots shall automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous year.
- (b) The Maximum Annual Assessment for Class A Lots may be increased without limitation if such increase is approved by the Class B Member 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 shall they be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; 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 at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. The annual assessment for Class B Lots shall be zero and for Class C Lots shall be one-fourth (1/4) 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. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article, and shall be prorated according to the number of months remaining in the calendar year. 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 of Directors.

The Association shall, within ten (10) business days after receipt of written request, and for such reasonable charge as the Board of Directors 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 on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 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 to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not 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.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

Section 5. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessment 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 Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and further provided that the special assessments for Class B lots shall be zero and the special assessments for Class C Lots shall be one-fourth (1/4) of the special assessment for a Class A Lot. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than 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 is 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 7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within fifteen (15) days after the due date shall incur 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 proceeding, 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 Area or by abandonment of his Lot.

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

pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of 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 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to residential use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of each initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to insure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or services deemed by the Board of 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 Defaults. 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 or entity providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time by the Declarant or an Approved Builder for or on behalf of the Association shall be credited against past or future assessments due from the Declarant or such Approved Builder, as appropriate.

ARTICLE VI MAINTENANCE OF LOTS AND COMMON AREAS

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 the improvements that 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 its Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) the 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

time 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.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free 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 the Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area 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, the cost of any such maintenance, replacement 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 part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

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 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 or 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.
- (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 the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. 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 Common Area, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or another 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 Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area 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 to 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 Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the 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 line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area 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.

For a period of twenty-five (25) years from the date hereof, Declarant grants to and reserves for the Declarant, the Association, and their 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 grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity 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 or entity 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 Area, and such encroachment was not 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 for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to the first Owner other than the Declarant or an Approved Builder.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area 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 Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area 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 Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Area 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. Site Triangles (Code Section 10-2086). No sight-obstructing or partially obstructing wall, fence, foliage, berm, parked vehicles or sign between the heights of twenty-four (24) inches and eight (8) feet above the curb line elevation, or the nearest traveled way if no curbing exists, shall be placed within any areas designated on a recorded map as a "sight triangle" or other similar designation. An easement over each such sight triangle is reserved for the benefit of the Declarant, the Association and the City for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser.

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 City, no building, fence, sign (including unit identification sign) wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon such 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, 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 \$125.00 for receiving and processing each application. 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 be 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 Subdivision.

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 date upon which Declarant no longer owns any Lots within the Properties, or December 31, 2009, whichever is earlier.

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 Declarant in accordance with its general plan of development.

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 appropriate governmental entity for the Dwelling constructed on a Lot.

ARTICLE X 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, restrictive covenants applicable to the Subdivision, or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. 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 altered by a vote of seventy-five (75%) percent of the Owners after the expiration of said twenty-five (25) year period.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, Section 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 be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent 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. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof correct shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other person or entity, 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 any Lot nor materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or the Common Area as set forth in this Declaration. *See also* Section 4 of Part A of Article XI hereof.

Notwithstanding any other provisions of this Declaration, no amendment of this relating to procedures for amending this Declaration or relating to any provision required by the Code to be included in this Declaration (including, without limitation, provisions relating to Stormwater Control Measures, funding requirements under any Stormwater Agreement applicable to the Properties, Stormwater Assessments, and the City's rights with regard to Stormwater Assessments), shall be effective without the prior approval (if required) of the Raleigh City Attorney or his/her deputy. Evidence of such approval (if required) shall be indicated by the signature of the Raleigh City Attorney or his/her deputy on the recorded amendment.

Furthermore, should the Federal Housing Administration ("FHA"), the Secretary of Veterans Affairs ("VA"), the Federal National Mortgage Association ("FNMA"), or the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other governmental entity which adopts or has adopted statutes, laws, ordinances, rules or regulations applicable to the Project, the Association or this Declaration subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Declarant or the Board, without consent of the Owners, may cause an amendment to this Declaration to be recorded to reflect such change.

Section 4. Non-Liability of Governmental Entities. The City shall not 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.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the City.

Section 6. 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 7. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the 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, restrictive covenants and other use restrictions applicable to the Properties, or rules and regulations adopted by the Association in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which

finer 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 Area; provided, however, that the Association may not suspend such Owner's right of access to or any stormwater drainage or 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 Area 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 stormwater drainage or 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 upon 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, attorney's fees and court costs, reasonably incurred in such action.

Section 8. Condemnation/Casualty. If all or any part of the Common Area 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 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 Area in lieu of a destroyed club house.

Section 9. 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 10. 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 JOHN'S POINTE HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a Special () Annual () Meeting of the Members of JOHN'S POINTE HOMEOWNERS ASSOCIATION, INC., was held on _____ (date) at _____ (time). The purpose or 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 in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve the action recited above was approved by at least _____ % of the Members as required by the Declaration and Bylaws of the Association.

President/Secretary

Section 11. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 12. 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.

Section 13. 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 laws, 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 14. 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.

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. Chapter 55A), and/or the Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Code.

Section 15. Rule 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 thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

ARTICLE XI RALEIGH CITY CODE REQUIREMENTS

PART A

DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. The following words and terms shall have the following definitions, unless the context in which they are used clearly indicates otherwise. (When these and other defined words or terms in this Article have an initial capital letter or letters, however, it is not required that their use in this Article have initial capital letters in order to have the defined meaning.) Some or all of the following words and terms may have the same definitions as defined for them in other portions of the Declaration; if so, they are being repeated here for convenience; if not, as used in this Article they have the definitions contained in this Article. Words and terms defined in other portions of the Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of the Declaration, unless those definitions are superseded or modified as a result of the conflict rules described in this Article (for example, words and terms defined by the Code and used in this Article have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article; however, to the extent that a word or term is defined in this Article differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all. All references to recording or to any requirement to record a document or plat in this Article refer to recording in the office of the Register of Deeds of Wake County, North Carolina.

- (a) “City” or “City of Raleigh” is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.
- (b) “Code” is defined as the Raleigh City Code as it exists from time to time, and includes all duly adopted regulations, rules, directives and policies of the City pursuant to or in furtherance of the Code.
- (c) “Maintain”, “maintenance”, “maintaining”, or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

- (d) "Stormwater Agreement" is defined as any agreement among the Declarant, the Association and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement includes, without limitation, the "Stormwater Replacement Protection Easement and Access Maintenance Agreement" required by Section 10-9027(c) of the Code, any escrow agreement required by Section 10-5006(b)(11)d of the Code, or any other manual or document addressing the operation and maintenance of Stormwater Control Measures and the payment of costs associated therewith. The "Stormwater Operations and Maintenance Manual and Budget" prepared and submitted to the City by Stewart & Proctor, PLLC, on behalf of Declarant is a Stormwater Agreement applicable to the Subdivision.
- (e) "Stormwater Control Measures" or "Stormwater Control Facilities" (such terms being used interchangeably herein and in the Stormwater Agreement) is defined as one or more devices and measures, together with associated stormwater drainage easements (however identified on a plat or in a document), conduits, inlets, channels, pipes, ditches, filters, buffers, bioretention areas, ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one Lot in the Properties, and which are located outside public street rights-of-way. Stormwater drainage easements that serve more than one Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area.

Section 2. Applicability. The Properties are located in the City of Raleigh, Wake County, North Carolina, and are subject to and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions specifically are referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of such Properties (for example, though not applicable to this Subdivision, provisions of the Code relating to private streets apply only to those portions of properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant, the Board of Directors, any committee of the Board of Directors, or any other person who or entity which has the authority to give such approval, disapproval, waiver or variance.

Section 3. Conflicts.

- (a) Some or all of the Properties are also subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any conflicting provisions of the Code, this Declaration, or any documents governing the operation of Association.

- (b) The provisions of the Code control over any conflicting provisions of this Declaration or any other documents governing the operation of the Association. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, the Declaration is deemed to be amended so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof.
- (c) The provisions of this Article control over any conflicting provisions of any other portion of this Declaration or any documents governing the operation of the Association.

Section 4. Amendment of Declaration. Declarant, as long as it owns any portion of the Properties, and the Association, at any time and from time to time, each without the consent or approval of any other person or entity except the City, has the right to amend the provisions of this Article to conform to or bring such provisions in compliance with, the requirements of the Code.

Section 5. Assessments. The Association at all times has the right to include as part of the assessments applicable to the Properties and the Owners thereof such amounts as are required to pay for all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on the Owners of the Properties or applicable portions thereof with the Association having responsibility for collection and payment to the City.

PART B

CLUSTER UNIT DEVELOPMENT (CODE SECTIONS 10-3071 and 10-3073)

Any portion of the Properties that is part of a “cluster unit development” as that term is defined in the Code, is subject to all of the following:

Section 1. Common Area. “Common Area” is defined as property intended for the use and benefit of the residents of the cluster unit development, and Common Areas include all of the following:

- (a) any private street;
- (b) stormwater control measures, including without limitation, detention facilities, retention facilities, wet ponds, sand filters, wetlands, bio-retention measures, swales and storm pipes that serve more than one (1) Lot and are located outside of public street rights-of-way (excluding those pipes and stormwater control measures serving one (1) Lot);
- (c) any utility line located outside public street rights-of-way and public utility easements, and not located on an individual Lot;
- (d) any site or facility designated a Common Area on any recorded plat or in the Declaration; and
- (e) any Code required shared facility or open space.

Section 2. Open Space. Open space Common Areas are subject to the following:

- (a) Right to Use. The right of each Owner of a residential Lot in the cluster unit development to use the open space Common Areas in the cluster unit development is guaranteed, subject to such rules and regulations as are allowed under this Declaration to be imposed by the Association and subject to suspension of use rights for reasons allowed in this Declaration.

- (b) Conveyance. Open space Common Areas shall be conveyed to the Association in fee simple without any encumbrances except drainage, greenway, and utility easements. Title to the open space Common Areas shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the applicable phase of the development. Common Area shall be preserved for the perpetual benefit of the Owners of the residential Lots within the Properties and shall be restricted against private or public ownership for any other purpose.

- (c) Exchange. Open space Common Areas shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the mortgaging and hypothecating of open space Common Areas; provided, the rights of the mortgagee are subordinated to the rights of the residential Lot Owners and the Association. Furthermore, nothing herein shall prevent the exchanging of Common Areas for other properties when all of the following are met:
 - (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 Planning Director of the City.

- (d) Adjacency. Common Areas used exclusively for open space in cluster unit developments in excess of the minimum area required by the Code may be located on separate tracts owned by the Association if such Common Areas:
 - (i) are approved by the City at the same time as the adjoining planned residential development; and
 - (ii) are adjacent to, or directly opposite, the planned residential development, city parks, and greenways for at least fifty (50) percent of the separated lot.

- (e) Dissolution. If the Association is dissolved, the open space Common Areas shall first be offered to the City, and if accepted, deeded to the City.

- (f) Recreation. Recreational uses located in open space Common Areas shall comply with Code Section 10-2072, recreational use related to a residential development, other than a single-family dwelling unit.
- (g) Stormwater control measures. No more than twenty-five percent (25%) of the minimum Common Area required by the Code shall be in outdoor ponds, sand filters or retention ponds, provided, this limitation shall have no application to any retention pond that meets all of the following:
 - (i) the retention pond or closely connected series of ponds is one-half ($\frac{1}{2}$) acre water surface area at normal pool in size or greater; and
 - (ii) the retention pond is surrounded by open space; and
 - (iii) the retention pond is accessible to all homeowners; and
 - (iv) the retention pond is an amenity complying with Section 10-2082.13(d) of the Code.

Section 3. Residential Density Transfers. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of Lots.

Section 4. Development Rights. Development rights retained by the Declarant or reserved or granted to any Lot Owner to add real estate to the cluster unit development, to add dwelling units, to add Common Areas, to change unit types within the cluster, to reallocate units within the cluster, or to withdraw real estate from the cluster unit development, as well as all conditions and limitations applied to the exercise of any such development rights, are described in other Articles and Sections of the Declaration.

Section 5. Addition of Land. The maximum amount of land that can be added to the cluster unit development identified on **Exhibit B**, and contains 46.4 acres.

Section 6. Number of Dwelling Units. The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification, are as follows:

- (a) maximum number of dwelling units = 256;
- (b) maximum number of dwelling units per acre = four (4).

Section 7. Phasing. During any period of time that recorded phases of the cluster unit development, including any recombinations or annexations, are less than twenty (20) acres (the Subdivision is in a Residential-4 district), the owner of the remaining unrecorded phases of the cluster unit development shall:

- (a) build in general conformity with the approved preliminary cluster unit development subdivision plan on file with the City of Raleigh Planning Department; and

- (b) annex the land in such unrecorded phases of the cluster unit development into the cluster unit development and the Declaration on or before **June 29, 2009**.

The Declarant has the right, without the approval or consent of any member of the Association or any other Person (except for the City, if the City's approval or consent is required), to subject such additional land to the Declaration as may be necessary to increase the total acreage of the cluster unit development to twenty (20) or more acres.

Section 8. Annexations of Additional Land. Annexations of lands which were not part of the approved cluster unit development or lands not made subject to the Declaration at the time of its recording (that is, unrecorded approved phases of the cluster unit development), may be annexed and made part of the Declaration and the recorded cluster unit development, subject to the requirements for annexation in the Declaration and provided that all of the following conditions are met with respect to the lands to be annexed:

- (a) the annexed lands are contiguous to the approved cluster unit development;
- (b) any development of the annexed land is first approved by the City;
- (c) annexation of such lands does not conflict with any recorded legal declarations; and
- (d) contemporaneously with either the development of the land or the recording of the plat of the annexed lands, whichever first occurs, the legal documents annexing the property shall be recorded.

Title to the open space Common Areas that are included within additional lands subjected to the Declaration shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the applicable phase of the development to an Owner other than the Declarant or an Approved Builder, and such open space Common Areas are subject to all other Code and Declaration provisions relating to open space Common Areas.

Section 9. General Provisions. The following provisions also are applicable to all portions of the Properties that are part of a cluster unit development:

- (a) **Association.** The Association shall be organized and in legal existence prior to the sale of any Lot in the Properties.
- (b) **Membership.** Membership in the Association is mandatory for each original Owner and any successive Owner of a residential Lot within the Properties.
- (c) **Insurance and Maintenance.** The Association is responsible for payment of premiums for liability insurance and local taxes on Common Areas, maintenance of private streets, recreational and other facilities located on the Common Areas, and payment of assessments for public and private capital improvements made to or for the benefit of the Common Areas.
- (d) **Assessments.** The Association is empowered to levy assessments against the Owners of residential Lots within the Properties for the payment of expenditures made by the Association for the items described in the immediately preceding section entitled "Insurance and Maintenance", as well as for any other

expenditures made by the Association for other matters for which the Association has financial responsibility under this Article XI, and any such assessments not paid by the Owner shall constitute a lien on the Lot of the Owner.

- (e) Easements for Use of Common Areas. Each Owner of a residential Lot has perpetual, non-exclusive easements for use and enjoyment of the Common Areas, including access, ingress, and egress to and from streets, parking areas and walkways.

Section 10. Access Easement. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residential Unit, and the contractors of such Owner or tenant, whose residential Unit is located closer than five (5) feet from an adjoining lot line, for the purpose of allowing the residential Unit to be maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residential Unit.

Section 11. Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Common Areas and streets in the cluster unit development hereby is established for the benefit of governmental agencies for installing, removing and reading water meters, and maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare including without limitation, law enforcement, fire protection, emergency services, garbage collection and the delivery of mail.

Section 12. Tree Preservation Warning Statement. Code Section 10-2082.12 with respect to Resource Management zoning districts, and Code Section 10-2103(d) with respect to certain open space areas, require tree preservation areas therein. With respect to all required tree preservation areas, there are significant consequences imposed under the Code when preserved trees are unlawfully removed or when unlawful land-disturbing activities proximate to such trees are undertaken. All such tree preservation areas required in connection with the Properties subject to the Declaration are described and identified as "30' Natural Protective Buffer" on **Exhibit A** attached hereto and incorporated by reference. If additional such tree preservation areas are applicable to additional lands that become party of the Properties by annexation to the Declaration, such tree preservation areas shall be identified in the document by which such additional lands are annexed to the Declaration.

PART C

STORMWATER

Section 1. Stormwater Control Measures. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and maintained by the Association as Common Area in strict compliance with the Stormwater Operations and Maintenance Manual and Budget for the Properties attached to the Stormwater Agreement. The expenses for maintenance of Stormwater Control Measures by the Association shall be Common Expenses. Failure to maintain the Stormwater Control Measures is a violation of the Code, potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

Section 2. Creation of Stormwater Assessments. The Declarant, for each Lot owned by Declarant within the Properties, and 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 agrees to pay to the Association, in addition to the assessments to be paid pursuant to the provisions of Article V of this Declaration, a "Stormwater Assessment" (hereinafter defined). Stormwater Assessments shall commence with respect to each Lot on the later of the date on which the Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and maintenance budget for the Stormwater Control Measures set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement. The Association shall assess the Stormwater Assessment, and the Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. Collection of Stormwater Assessments shall be governed by the provisions of this Part C and of Article V of this Declaration.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest (at a rate not to exceed the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot against which the assessment is made until paid. Each such Stormwater Assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Owner of such Lot at the time the assessment arose. In the event of a transfer of title to a Lot, the grantee shall be jointly and severally liable for such assessment as may be due and payable at the time of conveyance. However, no Mortgagee whose lien is first mortgage or deed of trust lien on a Lot and who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust shall be liable for unpaid Stormwater Assessments which accrued prior to such acquisition of title (a "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust).

The creation of the Stormwater Assessments is for the benefit of the City and may be collected and enforced by the City as provided herein and in the Code.

Section 3. Purpose of Stormwater Assessments. The Stormwater Assessments to be levied by the Association against each Lot shall be used as follows:

- (a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserves, under any Stormwater Agreement, including maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement, so that at all times the Stormwater Control Measures shall perform as designated and at all times shall comply with the Stormwater Agreement and the Code.

- (b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Articles of Incorporation or Bylaws of the Association, or in the Stormwater Agreement in connection with the Stormwater Control Measures.

Section 4. Assignment of Collection Rights and Lien Rights the City. As provided in the Stormwater Agreement and pursuant to Section 47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, without a vote of the Owners, for monies owed by the Association to the City pursuant to the Stormwater Agreement. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of Wake County, North Carolina, which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association, the record Owners of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded, plus interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorneys' fees. Any lien claims filed by the City shall be signed by the City of Raleigh Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Section 5. Effect of Assignment. Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners.

Section 6. Annexation of Additional Property. Additional real property from time to time may be annexed to the Properties, subjected to the Declaration, and subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following (all such real property is sometimes referred to in this Article as "annexed property")

- (a) Right to Annex. As provided in Article II of this Declaration, Declarant at any time and from time to time, in its sole discretion and without the approval or consent of the Association or any of its Members, shall have the right to annex to the Properties and subject to the Declaration any part or all of the "Additional Property", if any, described in the Declaration. Annexation to the Properties and subjection to the Declaration of any real property other than Declarant's annexation of Additional Property shall require the vote of not less than sixty-seven percent (67%) of the total number of votes in the Association (or written consent of Members having sixty-seven percent (67%) or more of the total number of votes in the Association). All annexations, including those by the

Declarant, shall not be valid without the written approval of the Planning Director of the City. Annexation of Additional Property and other real property may be accomplished in phases.

- (b) Procedure for Annexation. Any annexation shall be made by recording a Supplemental Declaration describing the real property to be annexed. The Supplemental Declaration may contain such complementary additions and modifications to the terms of the Declaration as may be necessary or desirable to reflect the different character, if any, of the annexed property and as are not inconsistent with the general scheme of the Declaration. In connection with the recording the Supplemental Declaration, as determined by the City, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement shall be entered into among the City, the Declarant and/or Association to address the Stormwater Control Measures of the annexed property. The Supplemental Declaration shall establish an additional Stormwater Assessment for the Lots in the annexed property with respect to all new Stormwater Control Measures located in or serving such annexed property, and such new Stormwater Control Measures shall be designated as Common Area on the recorded plat of the annexed property. The additional Stormwater Assessment shall be sufficient to maintain the new Stormwater Control Measures in or serving the annexed property and to pay the applicable replacement fund under the new or amended Stormwater Agreement, and shall be assessed only against the Owners of the Lots in such annexed property. Annexation shall be effective upon recordation of the Supplemental Declaration, and the real property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of the Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations of the Association. No Supplemental Declaration shall be valid without the written approval of the Raleigh City Attorney or his/her deputy.
- (c) Annexed Property. Each Owner of a Lot in annexed property automatically shall be a Member of the Association and such Owners and annexed property shall be subject to assessment by the Association for the benefit of the Properties or any part thereof in accordance with the terms of the Declaration, the Supplemental Declaration, the Code, or the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in the Declaration and in the Articles of Incorporation and Bylaws of the Association with respect to annexed property. Except as may otherwise be expressly provided in the Declaration or any Supplemental Declaration, the Properties, including the annexed property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Property may be expended by the Association for Common Expenses anywhere in the Property without regard to the particular phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Properties and shall have use and enjoyment of any Common Area facilities in the Properties, provided that any

such use shall be subject to the provisions of the Declaration, any Supplemental Declaration, and the Bylaws, rules, and regulations of the Association.

- (d) Conveyance of Common Area. All Common Areas and Limited Common Areas within annexed property shall be conveyed or dedicated (for example, easements) to the Association in accordance with the requirements of the Code.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized Member/Manager, as of the date set forth in the notary acknowledgement below.

DECLARANT

DLM Development Group, LLC

By: _____

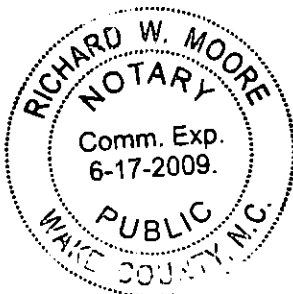
Manager

STATE OF NORTH CAROLINA, COUNTY OF WAKE

I, the undersigned, a Notary Public for the County and State aforesaid, certify that David H. Lips, Jr., personally appeared before me this day and acknowledged that he is a Manager of DLM Development Group, LLC, a North Carolina limited liability company, and that he, as Member/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 17th day of June, 2005.

[Stamp or Seal]



Notary Public

My commission expires: 6/17/09

EXHIBIT A

Lying and being in St. Marys Township, Wake County, North Carolina, and being more particular described as follows:

All of the real property, containing 14.37 acres, shown and described on those certain maps entitled "JOHN'S POINTE, Phase 1, Subdivision, Right-Of-Way Dedication And Utility Easement, Lots 1 thru 6 and 61 thru 67", prepared by Stewart-Proctor, PLLC (Drawing No. Battle-1-PLT-1-90), and recorded in **Book of Maps 2005, Page(s) 1190-1193**, inclusive, Wake County Registry, but saving and excepting therefrom the rights-of-way of public streets shown on said maps, as the same may be amended or supplemented from time to time.

EXHIBIT B

Lying and being in St. Marys Township, Wake County, North Carolina, and more particularly described as follows:

Tract 1: All of the property acquired by Declarant by deed recorded in Book 10595, Page 624, Wake County Registry, SAVING AND EXCEPTING THEREFROM the property described on Exhibit A hereto, which remaining property contains approximately 19.02 acres.

Tract 2" All of the property, containing approximately 30 acres, acquired by DLMD Development Group, LLC, by deed recorded in Book 11204, Page 1749, Wake County Registry.



BOOK:011422 PAGE:01161 - 01198

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



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

North Carolina – Wake County

The foregoing certificate___ of Richard W Moore

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

Laura M. Riddick, Register of Deeds

By: Jane Morgan
Assistant/Deputy Register of Deeds

This Customer Group

____ # of Time Stamps Needed

This Document

38 New Time Stamp
of Pages

WAKE COUNTY, NC 65
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/21/2005 AT 09:44:12

BOOK:011422 PAGE:01199 - 01206

Drawn by & HOLD FOR: MOORE & ALPHIN, PLLC (Box 155-rwm)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**RESTRICTIVE COVENANTS
FOR
JOHN'S POINTE SUBDIVISION**

DLM Development Group, LLC, a North Carolina limited liability company (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. LAND USE AND BUILDING TYPE. All Lots shall be used for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not more than three (3) cars, and other out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street.

2. DWELLING SIZE. The minimum heated square footage of a dwelling may not be less than 1,500 square feet for a one-story dwelling and 1,000 square feet on the first floor of a two-story or two and one-half story dwelling.

3. BUILDING SETBACKS; HOUSE LOCATION. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Subdivision or as otherwise required or permitted by the zoning ordinance of the City of Raleigh (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 the intersection of the two streets on which the Lot abuts.

4. FENCES. No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For John's Pointe

(the "Declaration"), recorded in office of the Register of Deeds of Wake County, North Carolina. To be approved, a fence must be a stockade-type fence and be made of wood or other product designed to look similar to wood; no chain link (metal or non-metal) or other fence normally made of metal will be approved. 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 nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

5. 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.

6. 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.

No mobile house trailer (whether on or off wheels), recreational vehicles, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat or boat trailer shall be parked on any street within the Subdivision. A boat and boat trailer may be parked or kept on a Lot if it is parked or kept in such a manner that the boat and trailer are screened from the street. Screening must include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article VIII of the 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 Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

7. ANIMALS. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

8. NUISANCES; BUSINESS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the Raleigh Board of Adjustments.

9. SIGNS. Except as otherwise required by the City of Raleigh, 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, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

10. ANTENNAS; SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than two feet (2') in diameter; (ii) the receiver or disc is located on the side of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the subdivision. Any such screening must be approved as provided in Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

11. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools shall be permitted. In-ground swimming pools are permitted, provided they are completely fenced in and further provided that the pool, fence and other facilities must be approved pursuant to Article VIII of the Declaration.

12. MAILBOXES. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Paragraph 18 of these Covenants.

13. MAINTENANCE OF LOT; CONSTRUCTION. Each owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. 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 twelve (12) 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 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 contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

14. CLOTHESLINES. No clothesline may be erected or maintained on any Lot.

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored 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 an approved enclosure the night of the scheduled pickup.

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling, which mains furnish domestic water from sources beyond the boundaries of the Lot.

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by the City of Raleigh.

18. EXTERIOR MAINTENANCE. The owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

19. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer and storm water drainage facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots 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 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.

Easements are also reserved for the benefit of the Declarant, the John's Pointe Homeowners Association, Inc. (the Association"), and the City of Raleigh (the "City"), and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the map referred to in Exhibit A as "Drainage Easement" (regardless of size), or any variation thereof, for the purpose of installing, operating and maintaining storm water drainage facilities thereon. 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, the Association or the City, unless approved as provided in Article VIII of the Declaration and, if required, by the City.

Easements are also reserved for the benefit of the Declarant, the Association, and the City, and their respective successors and assigns, over, across and under those portions of Lots 1 and 67 shown and designated as "30' Natural Protective Buffer" on the map referred to in Exhibit A for the purpose of ensuring that the Buffer area remains in its natural state, as required by the City of Raleigh. 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 VIII of the Declaration and, if required, by the City.

Easements are also reserved for the benefit of the Declarant, the Association, and the City, and their respective successors and assigns, over, across and under those portions of Lots 14 and 15 shown

and designated as "10' Pedestrian Easement" on the map referred to in Exhibit A for the purpose of providing pedestrian access to and from the Permanently Protected Managed Open Space abutting the western line of said Lots, as required by the City of Raleigh. 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 VIII of the Declaration and, if required, by the City.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

20. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

21. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article VIII of the 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 Wake County Registry.

22. STREET LIGHTING. Declarant reserves the right to subject the Subdivision to a contract with Progress Energy for installation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer.

23. ENFORCEMENT. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may also be enforced by the Association, pursuant to the Declaration and the Bylaws of the Association.

24. SEVERABILITY. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

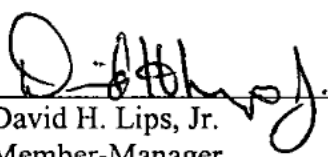
25. TERM. These covenants shall run and bind the land and all owners thereof for a period of 25 years from the date they are recorded, after which time, they shall be automatically extended for successive periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the Declarant Control Period, without the approval or joinder of any other person. These covenants may also be amended during the first twenty-five year period by an instrument signed by the then-owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-owners of not less than sixty-seven percent (67%) of the Lots.

26. JOHN'S POINTE HOMEOWNERS ASSOCIATION, INC. The owners of Lots within the Subdivision are Members of the John's Pointe Homeowners Association, Inc., and are subject to and bound by the Declaration, which provides additional restrictions on such Lots.

27. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the City of Raleigh. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

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

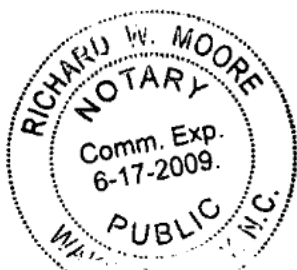
DLM Development Group, LLC

By: 
David H. Lips, Jr.
Member-Manager

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for said County and State, certify that David H. Lips Jr. personally appeared before me this day and acknowledged that he is a Member-Manager of **DLM Development Group, LLC**, a North Carolina limited liability company, and that he, as Member-Manager, executed the foregoing document on behalf of the limited liability company, by its authority duly given.

Witness my hand and official stamp or seal, this the 17th day of June, 2005.



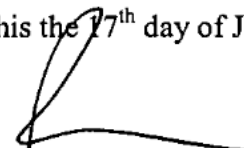
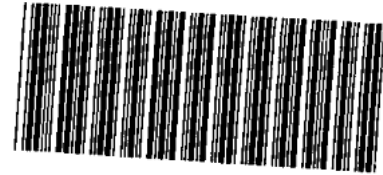

Notary Public
My commission expires: _____

EXHIBIT A

JOHN'S POINTE SUBDIVISION

Lying and being in St. Marys Township, Wake County, North Carolina, and being more particular described as follows:

All of Lots 1 through 6 and 61-67, inclusive, in John's Pointe Subdivision, as shown and described on the maps entitled "JOHN'S POINTE, Phase 1, Subdivision, Right-Of-Way Dedication And Utility Easement, Lots 1 thru 6 and 61 thru 67", prepared by Stewart-Proctor, PLLC (Drawing No. Battle-1-PLT-1-90), and recorded in **Book of Maps 2005, Pages 1190-1193**, inclusive, Wake County Registry, to which maps reference is hereby made for a more particular description, but excluding therefrom all Common Area and the rights-or-way of public streets.



BOOK:011422 PAGE:01199 - 01206

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

North Carolina – Wake County

The foregoing certificate___ of Richard W Moore

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

WAKE COUNTY, NC 860
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 08/01/2006 AT 16:32:02

BOOK:012096 PAGE:00280 - 00282

Drawn by and HOLD FOR: MOORE & ALPHIN, PLLC (Box 155) (rm)

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

**DECLARATION SUBJECTING LOTS
 TO THE RESTRICTIVE COVENANTS FOR
 JOHN'S POINTE SUBDIVISION**

DLM Development Group, LLC, a North Carolina limited liability company (hereinafter "Declarant"), hereby declares that the property described on **Exhibit A** attached hereto and made a part hereof, is and shall hereafter be held, transferred, sold and conveyed subject to the **Restrictive Covenants For John's Pointe Subdivision**, recorded in **Book 11422, Page 1199**, Wake County Registry (the "Covenants"), which Covenants shall be appurtenant to and run with the property, by whomsoever owned.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized Member/Manager, as of the date set forth in the notary acknowledgement below.

DLM Development Group, LLC

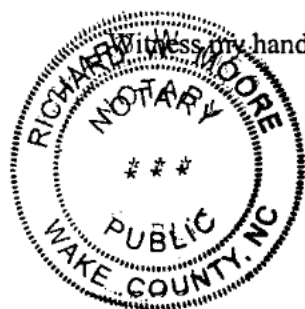
By: _____

David H. Lips, Jr.
 Member-Manager

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for said County and State, certify that David H. Lips Jr. personally appeared before me this day and, being personally known to me, acknowledged that he is a Member of **DLM Development Group, LLC**, a North Carolina limited liability company, and that he, as Member, voluntarily executed the foregoing document on behalf of the limited liability company, by its authority duly given.

Witness my hand and official stamp or seal, this the 1st day of August, 2006.



Notary Public

My commission expires: 6/17/08

EXHIBIT A

Lying and being in St. Marys Township, Wake County, North Carolina, and being more particularly described as follows:

All of **Lots 27 – 36** (inclusive), **40, 41**, and **68-121** (inclusive) shown and described on those certain maps entitled “JOHN’S POINTE, Phase 2, Subdivision, Right-Of-Way Dedication And Utility Easement”, recorded in **Book of Maps 2006, Pages 1331-1334** (inclusive), Wake County Registry, but specifically excluding the rights-of-way of public street and common areas shown on said recorded maps.



BOOK:012096 PAGE:00280 - 00282

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

WAKE COUNTY, NC 628
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 09/07/2006 AT 16:03:14

WAKE COUNTY, NC 483
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 08/02/2006 AT 14:22:30

BOOK:012157 PAGE:01911 - 01918

BOOK:012097 PAGE:02028 - 02034

Drawn by and HOLD FOR: MOORE & ALPHIN, PLLC (rm) - Box 155

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

SUPPLEMENTARY DECLARATION OF ANNEXATION TO JOHN'S POINTE SUBDIVISION

This Supplementary Declaration Of Annexation To John's Pointe Subdivision is made as of the date set forth in the notary acknowledgment herein by **DLM Development Group, LLC**, a North Carolina limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant have heretofore recorded that certain Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For John's Pointe Subdivision (a Cluster Unit Development), in **Book 11422, Page 1161**, Wake County Registry (the "Declaration");

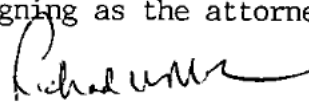
WHEREAS, pursuant to Section 2 of Article II and Section 7 of Part B of Article XI of the Declaration, Declarant desires to annex additional property to the Declaration and to subject such property to the Declaration and to the jurisdiction of the John's Pointe Homeowners Association, Inc.;

WHEREAS, Developer is the owner of the real property described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter the "Annexed Property"), which is within the property identified on Exhibit B to the Declaration;

NOW, THEREFORE, in consideration of the premises, Declarant hereby declare that the property identified and described on **Exhibit A** attached hereto and incorporated herein by reference shall be and hereby is annexed into the property covered by the Declaration and shall be and hereby is made subject to the Declaration and to the jurisdiction of the John's Pointe Homeowners Association, Inc.

This document is being re-recorded pursuant to N.C.G.S. Sec 47-36.1 to correct the acreage on Exhibit A. I am signing as the attorney who drafted the original instrument.

Richard W. Moore



Said Annexed Property shall be owned, held, transferred, sold, conveyed, given, donated, devised, inherited, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter the "Covenants and Restrictions") contained in the Declaration, which Covenants and Restrictions shall run with the land and be binding on all parties having or acquiring any right, title and interest in the Annexed Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized Member/Manager, as of the date set forth in the notary acknowledgement below.

DECLARANT

DLM Development Group, LLC

By: *Richard W. Moore*
Manager

STATE OF NORTH CAROLINA, COUNTY OF WAKE

I, the undersigned, a Notary Public for the County and State aforesaid, certify that **David H. Lips, Jr.**, personally appeared before me this day and, being personally known to me, acknowledged that he is a Member of **DLM Development Group, LLC**, a North Carolina limited liability company, and that he, as Member, voluntarily executed the foregoing in the name of and on behalf of the limited liability company, by its authority duly given.

Witness my hand and official stamp or seal, this the 1st day of August, 2006.

[Stamp or Seal]



R. Moore
Notary Public

My commission expires: 6/17/09

Approved by Raleigh City Attorney

By: *Ira J. Botvinick*
Ira J. Botvinick, Deputy City Attorney

August 2, 2006
Date

Said Annexed Property shall be owned, held, transferred, sold, conveyed, given, donated, devised, inherited, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter the "Covenants and Restrictions") contained in the Declaration, which Covenants and Restrictions shall run with the land and be binding on all parties having or acquiring any right, title and interest in the Annexed Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized Member/Manager, as of the date set forth in the notary acknowledgement below.

DECLARANT

DLM Development Group, LLC

By: _____

Manager

STATE OF NORTH CAROLINA, COUNTY OF WAKE

I, the undersigned, a Notary Public for the County and State aforesaid, certify that **David H. Lips, Jr.**, personally appeared before me this day and, being personally known to me, acknowledged that he is a Member of **DLM Development Group, LLC**, a North Carolina limited liability company, and that he, as Member, voluntarily executed the foregoing in the name of and on behalf of the limited liability company, by its authority duly given.

Witness my hand and official stamp or seal, this the 1st day of August, 2006.

[Stamp or Seal]



Notary Public

My commission expires: 6/17/09

SOUTHLAND ASSOCIATES, INC., Trustee under that certain Deed of Trust recorded in Book 10908, Page 1282, Wake County Registry (the "Deed of Trust"), and SUNTRUST BANK, a Georgia banking corporation and successor by merger of Central Carolina Bank, Beneficiary on the Deed of Trust, execute this Supplementary Declaration for the purpose of subordinating the lien of the Deed of Trust to the provisions of this Supplementary Declaration.

SOUTHLAND ASSOCIATES, INC.

Trustee

By:

Wayne Gentry
Vice President

SUNTRUST BANK

By:

Sr. V.P. President

STATE OF NORTH CAROLINA -- COUNTY OF WAKE:

I, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, certify that Wayne Gentry personally came before me this day and, being personally known to me, acknowledged that he/she is Vice President of SOUTHLAND ASSOCIATES, INC., Trustee, and that he/she, as Vice President, voluntarily executed the foregoing document on behalf of the corporation, by its authority duly given, for the purposes stated therein.

Witness my hand and official stamp or seal, this 2nd day of August, 2006.

[Stamp or Seal]



Judiann Wilkenson
Notary Public
Printed Name: JUDIANN WILKINSON
My Commission Expires: May 4, 2007

STATE OF NORTH CAROLINA -- COUNTY OF WAKE:

I, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, certify that
Rick Merrill personally came before me this day and, being personally
known to me, acknowledged that ~~he~~ she is Sn. V President of **SUNTRUST BANK**, and that
~~he~~ she, as Sn. V President, voluntarily executed the foregoing document on behalf of the
corporation, by its authority duly given, for the purposes stated therein.

Witness my hand and official stamp or seal, this 2nd day of August, 2006.

[Stamp or Seal]

Judiann Wilkinson
Notary Public
Printed Name: JUDIANN WILKINSON
My Commission Expires: May 6, 2007



EXHIBIT A

Lying and being in St. Marys Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, containing ^{16.52 (RM)}~~13.56~~ acres, more or less, shown and described on those certain maps entitled "JOHN's POINTE, Phase 2, Subdivision, Right-of-Way Dedication and Utility Easement", recorded in **Book of Maps 2006, Pages 1331-1334**, inclusive, Wake County Registry, but specifically excluding the rights-of-way of public streets shown on said maps.

BOOK:012097 PAGE:02028 - 02034

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Wake County Register of Deeds
Laura M. Biddick



BOOK:012157 PAGE:01911 - 01918

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