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REGISTRATION

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**MASTER DECLARATION OF COVENANTS AND RESTRICTIONS
OF MOSS CREEK COMMUNITY ASSOCIATION, INC.**

LAURA M. BIRDEN
REGISTER OF DEEDS
WAKE COUNTY

THIS DECLARATION, made this 25 day of November, 1997, by MOSS CREEK INVESTMENTS, LLC, a North Carolina Limited Liability Company (hereinafter called "Company"), and the undersigned Unit Owners (the "Unit Owners").

WITNESSETH

WHEREAS, the Company and the Unit Owners are the owners of the real property described in Article II of this Declaration and desire to create thereon a planned development community with representation of residential and recreational uses to be known as "Moss Creek";

WHEREAS, the Company and the Unit Owners desire to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions;

WHEREAS, the Company has caused or will cause to be incorporated under the laws of the State of North Carolina, a non-profit corporation, Moss Creek Community Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

NOW, THEREFORE, the Company and the Unit Owners declare that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments ("Assessments"), affirmative obligations, and liens (all hereinafter sometimes referred to as "the Covenants" or the "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I
DEFINITIONS**

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

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(a) "Association shall mean and refer to Moss Creek Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(b) "Moss Creek" shall mean and refer to the lands in Wake Forest, North Carolina, which are shown as a part of Moss Creek on the Company's Master Plan as revised from time to time.

(c) "Company" shall mean Moss Creek Investments, LLC, a North Carolina Limited Liability Company, its successors and assigns.

(d) "Developer" shall mean Moss Creek Investments, LLC, a North Carolina Limited Liability Company, its successors and assigns.

(e) "Affiliate" shall mean any corporation owning more than fifty percent (50%) of the voting stock of the Company or Developer, or which is owned or controlled by the Company or the Developer, and any partnership or joint venture in which the Company or the Developer has a fifty percent (50%) or more of the cash flow from such partnership or joint venture.

(f) The "Properties" shall mean and refer to the existing property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(g) "Residential Lot" shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a Single-Family Detached Dwelling as shown upon any recorded final subdivision map of any part of the Properties. No parcel shall, however, be classified as a Residential Lot until the first day of the month following the recording of a Plat in the Register of Deeds of Wake County, North Carolina, showing such Residential Lot.

(h) "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration by any supplemental declaration under the provisions of Article II hereof, which has not been subdivided into and classified as Residential Lots or Family Dwelling Units, through metes and bounds subdivision plats recorded in the Register of Deeds of Wake County, North Carolina provided, however, that "Unsubdivided Land" shall not include any

property which also qualifies as "Exempt Property" in paragraph (j) of this Article I. Unsubdivided Land, or portions thereof, shall remain classified as such until subdivided and classifiable as a Residential Lot or Lots or Development Unit Parcel pursuant to Section 3 of Article V.

(i) "Family Dwelling Unit" shall mean and refer to any improved property or any property formerly classified a Residential Lot for which a building permit has been issued by the appropriate governmental authorities, which property is located within the Properties and intended for use as a Single-Family Dwelling located within the Properties.

(j) "Exempt Property" shall mean and refer to the following classifications of property within the Properties, which property shall be exempt only from the payment of dues;

(1) All land designated on the Master Plan for intended use, or by actual use if applicable, for indoor and outdoor recreational and community facilities (if any) owned and operated by the Company, the Company's Affiliates, the Developer, the Developer's Affiliates, and the Associates.

(2) All lands and any improvements thereon designated in any way as Common Properties;

(3) All lands designated on the Master Plan or on recorded plats as Open Space (hereinafter referred to as "Open Space Areas"), and any improvements thereon which are defined in subparagraph (1) of this paragraph (j);

(4) Property which is used for the maintenance, operation and service of facilities within Common Properties and facilities within Open Space Areas which are defined in subparagraph (3) of this paragraph (j);

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

(k) "Owner shall mean and refer to the Owner as shown by the Real Estate Records in the Register of Deeds Office of Wake County, North Carolina, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagees or

holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or Tenant of the Owner. In the event that there is recorded in the Office of the Register of Deeds of Wake County, North Carolina, a long-term contract of sale covering any Lot or Parcel of land within the Properties, the Owner of such Lot or Parcel of land shall be the Purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the Purchaser is required to make payments for the Property for a period of extending beyond nine (9) months from the date of the contract and where the Purchaser does not receive title to the Property until all such payments are made, although the Purchaser is given the use of said property.

(l) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Family Dwelling Unit in Moss Creek.

(m) "Resident" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(n) "Member" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(o) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Moss Creek. Since the concept of the future development of Moss Creek is subject to continuing revision and change by the Company, present and future references to the "Master Plan" shall be references to the latest revision thereof.

(p) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Plan of Moss Creek prepared by the Company as the same may be revised from time to time by the Company, or the use to which any particular parcel of land is restricted by Covenants expressly set forth or incorporated by reference in deeds by which the Company has conveyed the property.

(q) "Common Properties" shall mean and refer to those tracts of land with all improvements thereon (if any) which are deeded or leased to the Association and designated in said deed deeded or leased to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired or leased by the Association if said property is designated a "Common Property." All Common

Properties are to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association.

(r) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots or certain actions by the Board of Directors of the Association more particularly set forth herein. In the event fifty-one (51%) percent of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members, provided, however, that if a higher or lower percentage required to "pass" shall be specifically expressed herein, that higher or lower percentage shall control in that instance.

(s) "Board of Directors" shall mean those person elected or appointed to act collectively as the directors of the Association.

(t) "Bylaws" shall mean the bylaws of the Association as they now or hereafter exist.

(u) "Institutional Lender" shall mean any bank, insurance company, trust company, real estate investment trust, savings and loan association, pension fund, or other first mortgage lender holding a first mortgage or deed of trust on any of the Property.

(v) "Other Developer" shall mean any entity other than the Company that owns or acquires Unsubdivided Land for development.

ARTICLE II EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to these Covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Wake County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be

referred to herein as the "Existing Property". The Company intends to develop the Existing Property in accordance with a Master Plan prepared in its Planning Department and placed on display in its Reception and Sales Office, and other areas. The Company reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Company, its successors and assigns, to adhere to the Master Plan in the development of the land shown thereon. Subject to its right to modify the Master Plan as stated herein, the Company shall convey to the Association certain properties designated on the Master Plan as properties which may be transferred to the Association, as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Properties. The Company shall not be required to follow any predetermined sequence or order of improvements and development; and, it may bring within the plan of these Covenants additional lands, and develop the same before completing the development of the Existing Property. Other than as stated in this paragraph, the Company shall have full power to add to, subtract from, or make changes in the Master Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Declaration in the following manner;

(a) Additions. During the period of development, which shall by definition extend from date to January 1, 2003, the Company, its successors and assigns, shall have the right, without further consent of the Association, by Supplementary Declaration, to bring within the plan and operation of this Declaration additional property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Residential Lots and Family Dwelling Units authorized in the Properties and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The addition authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such

complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to a simple majority of the vote of those present at a duly called meeting, the owner of any property who desires to add such property to the plan and operation of this Declaration and to subject it to the jurisdiction of the Association, shall record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Residential Lots and Family Dwelling Units authorized in the Properties, and therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient which are not inconsistent with the plan or this Declaration, but such modifications shall have no effect upon the Property described in Section I, Article II above, or upon any other additions to the Properties.

(c) Merger. Upon merger or consolidation of the Association with another Association, as provided for in the By-Laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Property, together with the Covenants and Restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, within the Existing Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association, or Institutional Lender.

(d) Additional lands which become subject to this Declaration

under the provisions of this Section 2 may in the future be referred to as a part of Moss Creek. Also, the name Moss Creek may be used by the Company to refer to other nearby properties not subject to this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Company (so long as it owns property subject to this Declaration) shall be a Member of the Association, and a creditor who acquires title to the Properties or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a Member of the Association. Every Owner shall be a Member of the Association. The Association may issue to each Member a membership card which shall expire upon sale by an Owner of his property in Planters Walk. Owners who are exempt from the payment of Assessments shall not be Members of the Association unless otherwise specified herein.

Section 2. Voting Rights. The Association shall have one (1) type of regular voting membership, and one (1) type of special voting membership which provides the Company, its successors and assigns, with the power to elect a portion of the Board of Directors:

TYPE "A": Type "A" Members shall be all Owners, including the Company, its successors and assigns, of Residential Lots and Family Dwelling Units. A Type "A" Member shall be entitled to two (2) votes for each Residential Lot and Family Dwelling Unit which the Type "A" Member owns.

TYPE "B": The Type "B" Member shall be the Company, its successors and assigns. The Type "B" member shall be entitled to elect a portion of the Board of Directors as set out in Section 4 of this Article III.

Payment of Special Assessments shall not entitle type "A" members to additional votes.

When any property entitling the Owner to membership as a Type "A" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of

the Association, all such Owners shall be Members of the Association. The vote for such Property shall be exercised as the Owners thereof determine, but in no event shall more than the number of votes specified in this Section 2 be cast for any Property, and no fractional vote shall be cast.

The voting rights of any Owner may be assigned by said Owner to his lessee; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. The Type "A" Members are sometimes hereinafter collectively referred to as the "Members".

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7), or nine (9) Members. The number and term of such Directors is to be determined in accordance with the provisions of the By-Laws of the Association. Except as may be otherwise provided in the Articles of Incorporation, there shall be two (2) classes of Directors: Class I Directors shall be elected by the Type "A" Members, and Class II Directors shall be elected by the Type "B" Members.

Section 4. Election of the Board of Directors. (a) Each Member of Type "A" Membership class shall be entitled to as many votes as equals the total number of votes he is entitled to based on his Ownership of or Tenancy in one (1) or more of the various classifications of property as computed by the formula set out hereinabove in Section 2 hereof. Each Member may cast the total number of votes to which he is entitled for each vacancy to be filled by a Class I Director. Cumulative voting shall not be allowed.

(b) The Type "A" Members shall elect the Class I Director(s), and the Type "B" Member shall elect the Class II Director(s) according to the following formula:

(1) The number of Class I Directors shall be determined by (A) dividing the number of Residential Lots and Family Dwelling Units owned by Type "A" Members by the cumulative maximum number of Residential Lots and Family Dwelling Units authorized by the Zoning Ordinances of the Town of Wake Forest as of the date of this Declaration and (B) then multiplying the resulting quotient by 66% of the total number of Directors, and (c) rounding the result to the nearest whole number, e.g., $1.49 = 1$, and $1.50 = 2$.

(2) The number of Class II Directors shall be determined by subtracting the number of Class I Directors from the total number of Directors.

The Class II Directors shall be elected by the Type "B" Member.

(3) For the purpose of this formula, the number of Residential Lots and Family Dwelling Units, owned by Type "A" Members and the cumulative maximum number of Residential Lots and Family Dwelling Units authorized in the Properties shall be determined by the Board of Directors as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

(4) Notwithstanding any provision in this Section 4 to the contrary, the right of the "Type B" Member to control the Board of Directors shall terminate not later than five (5) years after the date of the recording of this Declaration in the Wake County Registry.

Section 5. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum. In the event fifty-one (51%) percent, or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions hereof. At any time that the Type "A" members have the ability to elect a majority of the Board of Directors, the Members may require a Referendum on any action of the Board of Directors by presenting to the Secretary of the Board within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action a petition signed by not less than twenty-five (25%) percent of the Members.

Section 6. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the members at an open meeting of the Association (as distinguished from the Referendum) shall be as provided in the By-Laws.

Section 7. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing for such meeting, provided, however, that Proxies shall not be required for any action which is subject to a Referendum, in which case the votes of all the

Members polled shall be made by specifically provided ballots mailed or delivered to the Association.

Section 8. Ballots by Mail. When required by the Board of Directors, there shall be sent with notices or regular or special meetings of the Association, a statement of certain motions to be introduced for vote for the Members and a ballot on which each Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6 of this Article III. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements or Enjoyment in Common Properties. Subject to the provisions of these Covenants, the rules and regulations of the Association and any fees or charges established by the Association, every Type "A" and "B" Member, and every guest and tenant of such Type "A" and "B" Member, shall have a right of easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, or any Unsubdivided Land.

Employees of the Type "B" Member and its agent, shall have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

A Member's spouse, parent, and children who reside with such Member in Moss Creek shall have the same easement of enjoyment hereunder as a Member.

In those instances where a Residential Lot or Family Dwelling Unit or other property in Moss Creek is owned or occupied as a Tenant by three (3) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, such joint Owners and corporations shall annually appoint one (1) person as the "primary Member." Such Primary Member shall have the same easement of enjoyment in the Common Properties as Members who own or occupy such property singularly. The remaining Joint Members and Tenants and the principal officers of such corporation shall be entitled to an easement of enjoyment in the Common Properties by:

- (1) Paying the same use fees as guests of Members, or
- (2) By paying to the Association annually an amount equal to the Annual Assessment charged against the property in which he or she owns a fractional interest or occupies as a Tenant. The payment of such amount shall not entitle such remaining Joint Members, Tenants or principal officers to additional votes in the Association.

As determined in the sole and uncontrolled discretion of the Board of Directors, certain Owners of Exempt Properties, and certain Tenants and guests, may have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

Section 2. Title to Common Properties. (a) The Company covenants for itself, its successors and assigns, that it shall convey by deed to the Association, at no cost to the Association, and subject to (i) this Declaration of Covenants and Restrictions, (ii) all other restrictions and limitations of record at the time of conveyance, (iii) any restrictions, limitations, conditions, or determinations as to the purposes and uses of the conveyed properties as stipulated in said deed, and (iv) any commitments by the Company to construct certain improvements thereon as stipulated in said deed, those Common Properties described in Section 4 of this Article IV hereof, and any other parcels of land and any improvements thereon now or hereafter designated as Common Properties.

(b) The Association shall not refuse the designation of any parcel of land or any improvements thereon as an Common Property, and, further, the Association shall not refuse to accept any Common Property at such time as the Company, in its sole and uncontrolled discretion, deems it advisable to convey such property to the Association.

(c) Upon conveyance to the Association, and/or the subjection thereof to the provisions of this Declaration, of any parcel of land and any improvements thereon as a Common Property by the Company or any other party, the Association shall immediately become responsible for all maintenance and operation of said property, and for such additional construction of improvements thereon as may be authorized by the Association's Board of Directors. It is the purpose of this provision to provide that the Association shall be responsible for all maintenance and operation of all Common Properties.

(d) Notwithstanding anything in the foregoing to the contrary, the Company reserves unto itself, its successors and assigns, and its agents, the right to enter upon any Common Property, for the purpose of constructing indoor and outdoor recreational and community facilities thereon, including, but not limited to, a swimming pool and any showers, locker rooms, or other club facilities associated with such use and all rest room facilities, parking lots, service buildings, and concession-type food services associated with all such uses. The provisions of this paragraph shall in no way create any obligation on the part of the Company to construct any such facilities on said properties.

(e) Natural areas, trail areas, landscape areas within public rights-of-way, etc. may be designated from time to time as Common Properties, and, if so, shall be conveyed in large or small parcels from time to time after the Company has completed the surveying and platting of all adjacent subdivisions which may abut such natural areas, trail areas, etc. Written notification designating such properties as Common Properties will not normally show metes and bounds and, in any event, the metes and bounds as shown on the recorded plat and deed to the Association shall govern.

(f) Notwithstanding anything in the foregoing to the contrary, the Company shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof, but in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and/or maintaining the Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties provided, however, that any such mortgage is with the prior consent of two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the Members voting in person or by proxy at a duly called meeting of the Association; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures;

(c) The right of the Association to suspend the right to vote and use the Common Property and facilities thereon of any Member or Tenant or guest of any Member for any period during which the payment of any Assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any Assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment, and, provided that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) and services on the Common Properties.

(e) The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties, and

(f) The right of the Association to give or see all or any part of the Common Properties, including lease-hold interests, subject to (i) the provisions of this Declaration of Covenants and Restrictions and (ii) all other restrictions and limitations of record at the time of conveyance, to any public agency, authority, public service district, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided, however, that no such gift or sale or any parcel of land and improvements thereon, or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior nor more than fifty (50) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the Common

Properties prior to the recording hereof. Such certificates shall be conclusive evidence of authorization by the membership. The gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole and uncontrolled discretion.

(q) The right of the Company or the Association to convey all or part of the Common Properties to the Town of Wake Forest.

Section 4. The Company covenants for itself, its successors and assigns, it will convey to the Association the Common Property shown on each recorded "phase" or "section" map of the Properties prior to the conveyance of any Residential Lot or Family Dwelling Unit shown on such map, and that, prior to January 1, 2003, it shall convey to the Association, at no cost to the Association, and subject to all the restrictions and limitations of the various Articles of this Declaration and any other restrictions and limitations of record, all properties designated as Common Properties except such designated properties that are conveyed to the Town of Wake Forest.

ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company covenants, and each Owner of any Residential Lot, Family Dwelling Unit or Unsubdivided Land located within the Properties, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) Annual Assessments or charges; and (b) Special Assessments or charges for the purposes set forth in this Article, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof including a reasonable attorney's fee as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such Assessment is made, and shall also be the personal obligation of the Owner of such property at the time when the Assessment first became due and payable. Co-owners shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. Purpose of Assessments. The Annual Assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement, replacement and operation of the Common Properties and Intended Common Properties, and to provide services

which the Association is authorized to provide.

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

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and thereafter, during such Assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote (subject to the affirmative vote of 2/3 of each Type of Member), levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

If the Board of Directors, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any one (1) year, or in any one (1) year and all subsequent years, it may request approval of a specified increase in the Maximum Regular Annual Assessment for either one (1) year only, or for that one (1) year and all subsequent years, by the vote of the Members at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6. Should the Members vote in favor of such proposed increase, it shall be deemed approved and may be levied by the Board. An increase in the Maximum Regular Annual Assessment for one (1) year only pursuant to the provisions hereof shall in no way affect the Maximum Regular Annual Assessment for subsequent years or increases thereof in subsequent years.

(a) From and after the date of the recording of this Declaration in the Wake County Registry, the Maximum Regular Annual Assessment shall be the sums calculated in accordance with the Assessment Schedule set out on

Schedule A, as shall be automatically increased in each instance by percentage as set forth in Section 3(h) of this Article, and as may be increased pursuant to the provisions set forth immediately above.

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

A Residential Lot shall be deemed to be unimproved and shall not be deemed a Family Dwelling Unit until such time as a building permit has been issued for said property by the appropriate governmental authorities.

(c) Property shall be classified for purposes of these Covenants and the Annual Assessments as a Family Dwelling Unit until a building permit has been issued by the appropriate governmental authorities for a property formerly deemed a Residential Lot as defined in subparagraph (b) hereinabove.

(d) For purposes of these Covenants and the Annual Assessments, all properties which have not been subdivided into and classified as Residential Lots shall be classified as Unsubdivided Land; provided, however, that Unsubdivided Land shall not include any property which also qualifies as Exempt Property as defined in Section 12 of this Article V.

(e) Assessments shall be payable monthly. The billing schedule shall be the same for all properties of a specified category; however, the Board of Directors, in its discretion, may establish different schedules for the billing of Assessments due from different categories or property. Unless otherwise established, payments shall be due on the first day of each month (the "due-date").

(f) The Board of Directors may authorize a billing agent to collect the Assessments provided for herein.

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

(h) From and after January 1, 1998, the Maximum Regular Annual Assessment shall be automatically increased each year by an amount of ten (10%) percent per year over the previous years.

(i) Any increase in the Maximum Regular Annual Assessment shall be made in such a manner that the proportionate increase in such Assessment is the same for Owners of Residential Lots, Family Dwelling Units or Unsubdivided Land. Any time the actual Assessment levied by the Board of Directors of the Association is less than the Maximum Regular Annual Assessment, such decrease shall be proportionate among the Owners of Residential Lots, Family Dwelling Units and Unsubdivided Land. The decrease or increase applicable to each class of Owners of the various classes of property may be made disproportionately by the favorable vote of seventy-five (75%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6 hereof, and by seventy-five (75%) percent of the votes cast at said meeting by the Members of the classes whose proportionate share is being raised.

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

- (a) Construction, reconstruction, repair, or replacement of capital improvements upon the Common Properties, including the necessary and personal property related thereto;
- (b) For additions to the Common Properties;
- (c) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein;
- (e) Such Special Assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of fifty-one (51%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6(a). The notice of such meeting shall include one (1) statement from those Directors favoring the Special Assessment and one (1) statement from those Directors opposing the Special Assessment, containing the reasons for those Directors' support and opposition for the Assessment. Neither statement shall exceed five (5) pages in length.

This provision shall be interpreted to mean that the Association

may make in any one (1) year an Annual Assessment up to the maximum set forth in Section 3 of this Article V, plus an additional special Assessment. Such Special Assessment in any one (1) year may not exceed a sum equal to the amount of the Maximum Regular Annual Assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster, or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to the Maximum Regular Annual Assessment shall not affect its right to make a Special Assessment during the year.

The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the proportion of the Annual Assessments levied for the Assessment year during which such Special Assessments are approved by the Members.

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

- (a) Major rehabilitation or major repairs;
- (b) For emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss, and;
- (c) Initial costs of any new service to be performed by the Association.
- (d) For the periodic maintenance, repair, and replacement of improvements to the Common Properties and any Restricted Common Properties that it is obligated to maintain.

Section 6. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Article II, Section 2, hereof, and under the By-Laws of the Association.

Section 7. Date of Commencement of Annual Assessments. Due Date. Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than January 1, 1998, but not later than January 1, 1999.

Section 8. Duties of the Board of Directors. The Board of

Directors of the Association shall fix the amount of the Annual Assessment against each Residential Lot, Family Dwelling Unit, or Unsubdivided Land, within the Assessment Schedule as provided hereinabove, and shall, at that time, direct the preparation of an index of the Properties and Annual Assessments applicable thereto, and any Special Assessments applicable thereto, which shall be kept in the Office of the Association and which shall be open to inspection by any Member during regular business hours. Written notice of Assessment shall thereupon be sent to every Member subject thereto in accordance with Article VIII, Section 3.

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

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association. If the Annual Assessment or any Special Assessment is not paid on or before the due date specified in Section 3(e) hereof, then such Assessment shall become delinquent and shall (together with interest thereon at the rate of ten (10%) percent per annum from the due date and cost of collection thereof including a reasonable attorney's fee as hereinafter provided) become a charge and continuing lien on the land and all improvements thereof, again which each such Assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns.

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

Section 10. Subordination of the Lien. The Lien of the Assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any properties subject to Assessment. In the

event a creditor acquires title to any property subject to Assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to Assessments accruing after such acquisition.

Section 11. Exempt Property. The Properties defined in Article I, (j) subject to this Declaration shall be exempt from the Assessment, charge, and lien created herein.

Section 12. Annual Statements. The President, Treasurer, or such other Office as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than One Thousand and no/100 (\$1,000.00) dollars. Such Officer shall furnish to each Member of the Association who may make request therefore in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to such Member either in person or by mail. Any holder of a first mortgage on a lot (s) or unit(s) (and any Insurers or Guarantors of such first mortgage) shall be entitled upon written request to a financial statement for the immediately preceding fiscal year.

Section 13. Annual Budget. The Board of Directors shall prepare and make available to all members, at least sixty (60) days prior to the first day of the following fiscal year, a budget outlining anticipated receipts and expenses of the following fiscal year. The fiscal books of the Association shall be available for inspection by all Members at principal office of the Association during regular business hours. In preparing each Annual Budget, the Board of Directors shall use its best efforts based on generally accepted accounting procedures to accurately determine receipts and expenses.

Section 14. Working Capital Fund. As set out in Schedule A, at the time of closing of the initial sale of each Family Dwelling Unit a sum equal to at least two months assessment for each unit (based on the "Current Regular Annual Assessment" in effect at the time of the sale) shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire cash available to meet unforeseen expenses, and to acquire additional equipment or

services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain Common Properties equipment, furnishings, and improvements devoted to the following uses:

- (a) For parkways along roads or roadways, cul-de-sac islands, and entrances (including signs) throughout the Property;
- (b) For sidewalks, walking paths or trails through the Property;
- (c) For providing any of the services which the Association is authorized to offer under Section 2 of this Article VI;
- (d) For purposes set out in deeds by which Common Properties are conveyed to the Association, provided that such purposes shall be approved the Members of the Association as set out in Section 4 of this Article VI;
- (e) For indoor and outdoor recreational and community facilities, including, but not limited to a swimming pool, and any showers, locker rooms, or other club facilities associated with such use, and all rest room facilities, parking lots, service buildings, and concession-type food services associated with all such uses, and
- (f) For water and sewage facilities and any other utilities, if not adequately provided by a private utility, Wake County or the town of Wake Forest.
- (g) For the cleaning, landscaping and maintenance of all roadway medians and islands, parkways along said roadways, cul-de-sac islands and neighborhood and other area entrances (including signs).

Section 2. Services. The Association shall be authorized, but not required, except as specified in Section 3 or this Article VI, to provide the following services:

- (a) Cleaning and maintenance of all Common Properties and

also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

(b) Landscaping and beautification of roads, roadways, parkways, lakes, parks, sidewalks, walking paths, bike trails, and Common Properties;

(c) Lighting of roads, signs, landscaping, sidewalks, walking paths, bike trails, parking lots, and any recreational and community facilities located within the Properties;

(d) Garbage and trash collection and disposal;

(e) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

(f) The service necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;

(g) To take any and all actions necessary to enforce all Covenants and Restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any Covenants or Restrictions applicable to the Properties;

(h) To set up and operate an Architectural Review Board for the purposes outlined in Article VII hereof.

(i) To construct improvements on Common Properties for use for any of the purposes authorized in this Article, or as may be required to provide any of the services authorized in this Article;

(j) To provide administrative services, including, but not limited to legal, accounting, and financial; and communication services, including, but not limited to, community newsletters and newspapers to inform Members or activities, notices or meetings, referendums, and other issues and events of community interest;

(k) To provide liability and hazard insurance covering

improvements and activities on the Common Properties;

(l) To provide water, sewage, and any necessary utility services not provided by a public body, private utility or the Company;

(m) To provide any or all of the above listed services to another association of Owners of real property under a contract, the terms of which must be approved by the Board of Directors.

Section 3. Minimum List of Functions and Services. The "Minimum List of Functions and Services" shall establish and define the minimum level of functions and services which the Association must furnish or cause to be furnished to its Members. So long as the Company is engaged in the development of Properties which are subject to the terms of this Declaration, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the prior written consent of the Company. The "Minimum List of Functions and Services" is as follows:

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

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

- (1) The Association shall set Assessments, levy cash Assessments, notify the Members of such Assessments, and collect such Assessments.
- (2) The Association shall prepare accurate indexes of Members, Votes, Assessments, the Cumulative Maximum Number of Residential Lots and Family Dwelling Units Authorized in the Properties, and the Maximum Regular Annual Assessment;
- (3) The Association shall operate an Architectural Review Board;

- (4) The Association shall maintain and operate all Common Properties;
- (5) The Association shall hold Annual Meetings, Special Meetings, and Referendums as required, hold elections for the Board of Directors as required, and give Members "proper notice" as required;
- (6) The Association shall prepare Annual Statements and Annual Budgets, and shall make the financial books of the Association available for inspection by Members at all reasonable times.
- (c) The Association shall provide appropriate liability and hazard insurance coverage for improvements and activities on all Common Properties.
- (d) The Association shall provide appropriate director's and officers' legal liability insurance, and indemnify persons pursuant to the provisions of the By-Laws of the Association.
- (e) The Association shall keep a complete record of all its acts and corporate affairs.
- (f) The Association shall provide general maintenance of all identification, informational and directional signs, bike trail signs, and neighborhood and other area signs, including, but not limited to, painting, light replacement, repair work and replacement as needed.
- (g) The Association shall operate and maintain all streetlights within all Common Properties.
- (h) The Association shall provide regular maintenance and cleanup of all Common Properties, including, but not limited to, mowing of grass, fertilization as needed, landscape maintenance as needed, pickup and disposal of trash, repair, maintenance and replacement of sprinkler systems, washing down of picnic tables and benches as needed, and painting, repairs to and replacement of all improvements as needed.
- (i) Insurance coverage on the Property shall be governed by the following provisions:

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- (1) Ownership of Policies. All insurance policies upon the Common Property shall be purchased by the Association for the benefit of all the Association, the Owners, and the Developer.
- (2) Coverage. All buildings and improvements upon and all personal property included in the Common Areas and facilities shall be insured in an amount equal to one hundred (100%) percent insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
 - (i) Loss or damage by fire and other hazards covered by standard extended coverage endorsement, and
 - (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land.
 - (iii) Such policies shall contain clauses providing for waiver of subrogation.
 - (iv) The Association may elect not to insure items of personal property having an individual value of less than \$500.00.
- (3) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group or a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (4) Premiums. Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the Owners as an assessment according to the provisions of Article V above.
- (5) Proceeds. All insurance policies purchased by the

Association shall be for the benefit of the Association, and shall provide that all proceeds thereof shall be payable to the Association.

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 3 of this Article VI. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide, may be added or reduced at any time upon the affirmative vote of fifty-one (51%) percent of the votes cast by the Type "A" Members at a duly called meeting of the Association; provided, however, no such changes shall be effected without the prior written consent of the company so long as the Company or its successors or assigns is a Type "B" Member of the Association.

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the Association.

ARTICLE VII GENERAL PROVISIONS

Section. Duration. The Covenants and Restrictions of this Declaration and any Amendments thereto shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically extended for successive periods of ten (10) years. The number of ten (10) year extension periods hereunder shall be unlimited, and this Declaration shall be automatically extended upon the expiration of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year extension period, unless, at a duly called meeting of

the Association, sixty-seven (67%) percent or more of the total vote entitled to be cast by each Type of Member of the Association shall vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the Resolution shall execute a certificate which shall set forth the Resolution of Terminating adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that Notice of such Meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast in favor of such Resolution, and the total number of votes cast against such Resolution. Said certificate shall be recorded in the Register of Deeds Office, Wake County, North Carolina, and may be relied upon for the correctness of the facts contained herein as they relate to the termination of this Declaration.

Section 2. Amendments. All proposed Amendments to this Declaration shall be submitted to a vote of the Members at a duly called meeting of the Association, and any such proposed amendment shall be deemed approved if two-thirds (2/3) of each Type of Member vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior not more than fifty (50) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the Amendment, the effective date of the Amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such Amendment was adopted), the date of the meeting of the Association at which such Amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the number of votes necessary to adopt the Amendment, the total number of votes cast in favor of such Amendment and the total number of votes cast against the Amendment. Such Addendum shall be recorded in the Office of the Register of Deeds, Wake County, North Carolina.

So long as the Company, as the Type "B" Member, is entitled to elect a majority of the Members of the Board of Directors of the Association, no Amendment of this Declaration shall be made without the consent of the Company; and until the end of the period of development no Amendment of this Declaration shall be made without the consent of the Company which would have the effect of creating a disproportionate increase in the maximum Regular Annual Assessment, the actual assessment levied, or any Special Assessment of any Class of Owners.

Notwithstanding the foregoing, the Company, for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, with the consent and approval of VA, or HUD, FHLMC, and FNMA, if necessary, and without the consent of any Owner, in order to qualify the Association for tax-exempt status, and to correct obvious errors and omissions herein. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when delivered personally or sent by mail, with the properly postage affixed, to the address appearing on the Association's Membership list. Notice to one (1) or more co-owners or co-tenants of a Residential Lot or Family Dwelling Unit shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants; and failure by the Association or any Member or the Company to enforce any Covenant or Restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5. Severability. Should any Covenant or Restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable,

for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions, and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument proved otherwise.

Section 8. Other Agreements. Notwithstanding anything contained herein to the contrary, all the provisions of these Covenants shall be subject to and conform with the provisions of:

(a) The Zoning Ordinances of the Town of Wake Forest and County of Wake, North Carolina, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified;

(b) The Mater Plan for the development of the Moss Creek as may from time to time hereinafter be amended or modified;

None of the provisions of this Section 8 are or shall in any way be construed to be or to constitute a conveyance, transfer, disposition, waiver or relinquishment of any right, title, and interest of the Company or the Association, as their respective rights, titles, and interests may appear in and to or under any of the above referenced instruments or documents to or for the benefit of any other person, firm or corporation.

Section 9. Limited Liability. In connection with all reviews, acceptance, inspections, permissions, consents or required approvals by or from the Company and/or the Association contemplated under this Declaration, the Company and/or the Association shall not be liable to an Owner or to any other

person or account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 10. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto within ten (10) years of the date of recording this Declaration, all Common Properties belonging to the Association at the time of such adjudication shall, at the option of the Company, revert to the Company, and thereafter the Company shall own and operate said Common Properties as set forth below. If said adjudication shall occur on that date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, or if the Company elects that such reversion referred to in the immediately preceding sentence not occur, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of Wake County, North Carolina, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

(a) Each Lot or Parcel of land located within the Properties shall be subject to an Annual Assessment which shall be paid by the Owner of each such Lot or Parcel to the Company or Trustee, whichever becomes the successor in title to the Association. The amount of such Annual Assessment and its due date shall be determined solely by the Company or the Trustee, as the case may be, but the amount of such annual Assessment on any particular Lot or Parcel shall not exceed the amount actually assessed against the Lot or Parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (b) immediately below;

(b) The Maximum Regular Annual Assessment which may be charged by the Company or Trustee hereunder on any particular Lot or Parcel may be automatically increased each year by an amount of ten (10%) percent.

(c) Any past due Annual Assessment together with interest thereon at the rate of ten (10%) percent per annum from the due date and all costs

of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the Annual Assessment become past due, and it shall also constitute and become a charge and continuing lien on the Lot or Parcel of land and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Company, or the Trustee, as the case may be, shall be required to use the funds collected as Annual Assessments of the operation, maintenance, repair, and upkeep of the Common Properties. The Company or Trustee may charge as part of the cost of such functions the reasonable value of this services in carrying out the duties herein provided. Neither the Company nor the Trustee shall have the obligations to provide for operation, maintenance, repair, and upkeep of the Common Properties once the funds provided by the Annual Assessment have been exhausted.

(e) The Company shall have the right to convey title to the Common Properties, and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by sixty-seven (67%) percent of each Type of Member or in the alternative shall be found to be in the best interests of the Owners of property within the Properties by the Superior Court of Wake County, North Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair, and upkeep of such properties, then for the payment of any obligations distributed among the Owners of property within the Properties, exclusive of the Trustees, in a proportion Assessment on property owned by a particular Owner bears to the total Maximum Regular annual Assessments for all property located within the Properties.

Section 11. Management and Contract Rights of Association. The Company may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption or ratification of

the terms and conditions of such contract. Any contract or lease entered into by the Company or by the Association while the company is in control thereof shall contain provisions allowing the Association to terminate such contract without justification or penalty after transfer of management by the company to the Association.

Section 12. Rights of Note holders.

(a) Any institutional holder of a first mortgage on a Lot will, upon written request, be entitled to:

- (i) Inspect the books and records of the Association during normal business hours,
- (ii) Receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year,
- (iii) Receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings,
- (iv) Receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage,
- (v) Receive written notice of any sixty-day delinquency in the payment of assessments or charges owned by the owner of any lot on which it holds the mortgage,
- (vi) Receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's Association.
- (vii) Receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders,
- (viii) Be furnished with a copy of the master insurance policy; and
- (ix) Receive a copy of any Supplementary Declaration which

contains additions, provisions or modifications to the Declaration pursuant to the provisions of Article II, Section 2(a) hereof thirty (30) days prior to the recording of such Supplementary Declarations.

(b) Without the prior written consent of not less than 66% of Institutional Lenders, the Association may not:

- (i) Abandon, partition, subdivide, encumber, sell or transfer real estate or improvements which are owned by the Association for the benefit of all members.
- (ii) Alter or amend the method of determining assessments that may be levied against an owner.
- (iii) Use hazard insurance proceeds for losses to improvements located on Association property for other than the repair, replacement or reconstruction of such improvements.

Section 13. Easements.

(a) Walks, Drives, Utilities, Etc. All Properties shall be subject to such easements for walkways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone, streets and electric power lines, television antenna lines, other utilities; ingress, egress and regress and otherwise as shall be established by recorded maps or deeds of easement by the Company, and the Association shall have the power and authority to grant and establish further such easements upon, over, and under and across the Properties.

(b) Easement to Wake County and Town of Wake Forest. An easement is hereby established for municipal, state and public utilities serving Moss Creek their agents and employees over all Common Properties hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

(d) Company and Association reserve the right to subject the Property to a contract with the Town of Wake Forest for the installation of above ground and underground electric cables and lines and/or the installation of street lighting, either or both of which may require an initial payment and/or a

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continuing monthly payment to the Town of Wake Forest by the Owner of each Lot within said property.

Section 15. Member Type Approval. In all provisions in this Declaration, the Articles of Incorporation and By-Laws of the Association which require approval of a percentage of Members, such shall mean the percentage of each Type of Member.

IN WITNESS WHEREOF, the Company and the Unit Owners have caused this instrument to be executed as of the day and year first above written.

MOSS CREEK INVESTMENTS, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY

By: James M. Adams, Jr., Member

UNIT OWNERS:

Ray A. Allen (SEAL)

Logan Anthony Brown (SEAL)

Bene Rukaszuk (SEAL)

Alan J. Plaks (SEAL)

Loren C. Plaks (SEAL)

Millridge Investments, Inc.

By: James M. Adams, Jr.

President

Attest:

Wayne W. Adams

Secretary

(Corporate Seal)

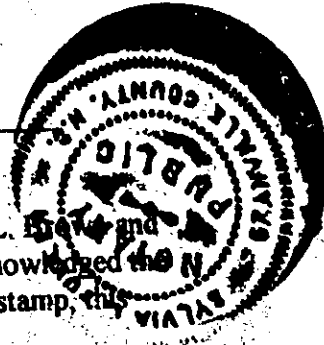
BK7803PG0633

STATE OF NC COUNTY OF Granville

I, a Notary Public of the County and State aforesaid do hereby certify that Gary L. ~~Smith~~ and wife, Lou Anne Fortney Brown, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal or stamp, this 25 day of November, 1997.

My Commission Expires:
2-16-99

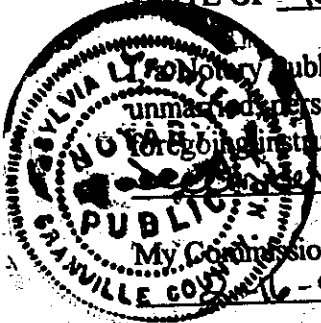
Sylvia Stewart
Notary Public

STATE OF NC COUNTY OF Granville

I, a Notary Public of the County and State aforesaid do hereby certify that Rene Rokoszak, unmarried, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal or stamp, this 11 day of November, 1997.

My Commission Expires:
2-16-99

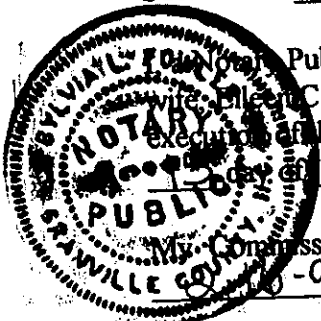
Sylvia Stewart
Notary Public

STATE OF NC COUNTY OF Granville

I, a Notary Public of the County and State aforesaid do hereby certify that Alan S. Plaks and wife, Ellen C. Plaks, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal or stamp, this 11 day of December, 1997.

My Commission Expires:
2-16-99

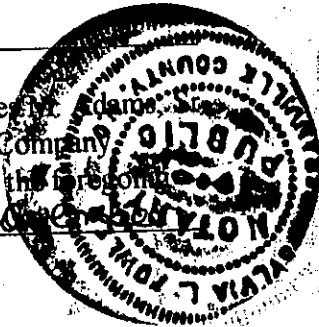
Sylvia Stewart
Notary Public

STATE OF NC COUNTY OF Granville

I, a Notary Public of the County and State aforesaid do hereby certify that James C. Adams, Jr., Member of Moss Creek Investments, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledge the due execution of the foregoing instrument. Witness my hand and official seal or stamp, this 25 day of November, 1997.

My Commission Expires:
2-16-99

Sylvia Stewart
Notary Public



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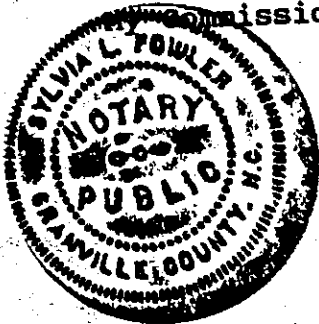
NORTH CAROLINA
GRANVILLE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Gayle W. Adams, personally appeared before me this day and acknowledged that she is Secretary of Millridge Investments, Inc., a North Carolina Corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its Secretary. Witness my hand and official seal or stamp, this

25 day of November 1997.

My commission Expires: 2-16-99

Sylvia L. Fowler
Notary Public



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of *Sylvia L. Fowler*

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. BIDDICK, Register of Deeds

By *Charles B. Biddy*
Asst. Deputy Register of Deeds

EXHIBIT A

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Beginning at the northwest intersection of that sixty foot access easement described in that Deed recorded in Book 2767, Page 807, Wake County Registry and Ligon Mill Road (S.R. 2044), runs thence with the northern right of way line of said sixty foot access easement as follows, South 82 degs. 26 min. 56 sec. West 58.46 feet to a point, along a curve to the left having a radius of 344.41 feet a distance of 108.90 feet and having a chord bearing and distance of South 73 degs. 26 min. 07 sec. West 108.44 feet to a point, South 64 degs. 22 min. 38 sec. West 1,150.26 feet to a point, along a curve to the left having a radius of 303.77 feet a distance of 109.75 feet and having a chord bearing and distance of South 54 degs. 01 min. 38 sec. West 109.15 feet to a point, South 43 degs. 40 min. 38 sec. West 250.79 feet to a point, and along a curve to the left having radius of 713.96 feet a distance 9.94 feet and a chord bearing and distance of South 43 degs. 16 min. 42 Sec. West 9.94 feet; thence leaving said sixty foot access easement and running with the northern line of the property of The Town of Wake Forest North 80 degs. 41 min. 42 sec. West 287.89 feet to a tack in a stump; thence North 2 degs. 10 min. 02 sec. West 109.98 feet to an iron stake; thence along the northern line of the property of The Town of Wake Forest as recorded in Book 2767, Page 807, Wake County Registry, South 87 degs. 49 min. 26 sec. West 569.50 feet to an iron stake in the center line of a twenty foot sanitary sewer easement as shown on that map recorded in Book of Maps 1976, Page 485, Wake County Registry; thence along the center line of said sanitary sewer easement as follows, North 28 degs. 28 min. 41 sec. East 55.09 feet to a manhole; North 35 degs. 00 min. 05 sec. East 406.41 feet to a manhole, North 24 degs. 36 min. 13 sec. East 262.43 feet to a manhole, North 54 degs. 00 min. 11 sec. East 369.87 feet to a manhole, North 25 degs. 00 min. 38 sec. East 403.90 feet to a manhole, and North 53 degs. 16 min. 13 sec. East 137.52 feet to a point; thence leaving the said sanitary sewer easement North 06 degs. 42 min. 10 sec. East 388.47 feet to an iron stake in the southern line of the property of Thomas J. Byrne, now or formerly, as recorded in Book 310, page 441, Wake County Registry, thence with the southern line of the said Byrne property as follows, South 83 degs. 17 min. 50 sec. East 411.10 feet to an iron stake, South 83 degs. 17 min. 50 sec. East 892.66 feet, and South 83 degs. 17 min. 50 sec. East 3.69 feet to a point in the western right of way line of Ligon Mill Road (S.R. 2044); thence with the western line of said Ligon Mill Road as follows, South 07 degs. 39 min. 53 sec. West 54.24 feet to a point, South 05 degs. 48 min. 29 sec. West 50.81 feet to a point, South 04 degs. 35 min. 31 sec. West 93.39 feet to a point, South 03 degs. 27 min. 48 sec. West 50.58 feet to a point, South 02 degs. 55 min. 27 sec. West 50.61 feet to a point, South 01 degs. 02 min. 10 sec. West 51.07 feet to a point, South 01 degs. 01 min. 16 sec. East 51.00 feet to a point, South 03 degs. 08 min. 46 sec. East 51.13 feet to a point, South 05 degs. 12 min. 31 sec. East 50.74 feet to a point, South 06 degs. 13 min. 20 sec. East 50.56 feet to a point, South 07 degs. 26 min. 08 sec. East 50.47 feet to a point, South 07 degs. 47 min. 45 sec. East 100.34 feet to a point, South 07 degs. 55 min. 13 sec. East 49.82 feet to a point, South 08 degs. 21 min. 50 sec. East 50.26 feet to a point, and South 09 degs. 08 min. 06 sec. East 64.86 feet to the point and place of BEGINNING, and being identified as Tract 1, containing 53.4422 acres according to that survey, dated 9/19/95, entitled "Boundary Survey, Property of A.J. Speight & Christine M. Speight" and prepared by Bass, Nixon & Kennedy, Inc., Consulting Engineers.