

PRESENTED
FOR
REGISTRATIONPrepared By and Hold For **000542** Aaron D. Garrett, Attorney at Law
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

LAND & LIDBICK
REGISTER OF DEEDS
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONTCLAIR SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONTCLAIR SUBDIVISION (hereinafter referred to as the "Declaration"), made this 6th day of August, 1998, by MONTCLAIR, L.L.C., a North Carolina Limited Liability Company (hereinafter referred to as "Declarant").

W I T N E S S E T H :INTRODUCTION

WHEREAS, the Declarant and THE NEW FORTIS CORPORATION, a North Carolina corporation, are the present owners of those certain lots and parcels and tracts of real property (hereinafter referred to as the "Property" or the "Properties") in the Town of Apex, Township of White Oak, County of Wake, State of North Carolina, being more particularly described as follows:

FIRST TRACT: BEING all of Lots 22, 23, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 55, 56, 57, 58, 59, 60, 61 and 62 of MONTCLAIR SUBDIVISION as depicted on that certain plat of survey by Kenneth Close, Inc. entitled "SUBDIVISION MAP OF MONTCLAIR PHASE 1 - SECTION 2", dated 1-12-97, and recorded in Book of Maps 1998, Page 630, Wake County Registry, and

SECOND TRACT: BEING all of Lots 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 of MONTCLAIR SUBDIVISION as depicted on that certain plat of survey by Kenneth Close, Inc. entitled "SUBDIVISION MAP OF MONTCLAIR PHASE 1 - SECTION 1", dated 1-12-97, and recorded in Book of Maps 1998, Page 629, Wake County Registry; and

WHEREAS, Declarant desires to create on such Properties a residential community of single-family residential dwellings to be known as "MONTCLAIR SUBDIVISION" (hereinafter sometimes referred to as the "Subdivision"); and

WHEREAS, Declarant desires to insure an appropriate development and improvement of the Properties and each building site therein, preserve the natural beauty of the Properties, prevent the construction of poorly designed or constructed improvements, and secure the proper location of all dwelling units situated on the Properties; and

WHEREAS, Declarant has and may in the future designate on certain single-family residential lots depicted on the various Plats of the Subdivision (as now or hereafter recorded) certain "LANDSCAPE EASEMENTS" and "UNDISTURBED STREETSCAPE BUFFERS" and other entryway/sign easements (hereinafter referred to as the "ENTRYWAY EASEMENT/STREET-BUFFER AREAS", which are for the benefit of the entire Subdivision and all of the owners (both present and future) of the single-family residential lots in the MONTCLAIR

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Prepared By and Hold For: Aaron D. Garrett, Attorney at Law
(BOX 67)

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
MONTCLAIR SUBDIVISION

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SUBDIVISION as presently and hereafter depicted on the recorded plats of the MONTCLAIR SUBDIVISION; and

WHEREAS, Declarant desires to provide for the upkeep and maintenance of ENTRYWAY EASEMENT/STREETSCAPE BUFFER AREAS, and, to that end, desires to subject all of the Properties within the Subdivision to the protective covenants, conditions, restrictions, easements, charges, assessments and liens hereinafter set forth, each and all of which is and are for the benefit of said Properties, its present and subsequent owners as hereinafter specified; and

NOW, THEREFORE, Declarant hereby declares that all of the Properties hereinabove described (together with any property which may be added pursuant to the terms hereof) shall be owned, held, transferred, sold, conveyed and occupied subject to the following easements, protective covenants, conditions, restrictions, charges, assessments and liens set forth in this Declaration (hereinafter referred to collectively as either the "Declaration" or the "Restrictions"), which said Restrictions shall run with the title to the Properties and be binding on all parties owning any right, title or interest in said Properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Property, each owner thereof (both present and future).

ARTICLE I

DEFINITIONS

The following words or terms when used in this Declaration, or any Supplemental Declaration, unless the context shall prohibit, shall have the following meanings:

A. "Architectural Committee" shall mean and refer to the Architectural Committee of Montclair Subdivision, a committee composed of two (2) persons initially appointed by the Declarant and thereafter the three (3) persons appointed by the majority vote of all of the Lot Owners of the single-family residential lots in MONTCLAIR SUBDIVISION, as presently or hereafter depicted on plats recorded by the Declarant in the Office of the Register of Deeds of Wake County, North Carolina.

B. "ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS" shall mean and refer to all areas depicted as "SIGN EASEMENTS" and "UNDISTURBED STREETSCAPE BUFFER" on the various Plats of MONTCLAIR SUBDIVISION now or hereafter recorded by the Declarant, its successors and/or assigns, said areas being situated at or near the entrance(s) to the MONTCLAIR SUBDIVISION. These areas shall be maintained by all of the owners of the single-family residential lots in MONTCLAIR SUBDIVISION.

C. "Declarant" shall mean and refer to MONTCLAIR, L.L.C, a North Carolina Limited Liability Company, its successors and/or assigns.

D. "Declarant's Property" shall mean and refer to the property presently owned by the Declarant and described as "TRACT ONE" and "TRACT TWO" in the INTRODUCTION on Page 1 of the Declaration, together with such additional properties as may be added/annexed into the Subdivision by the Declarant,

its successors and/or assigns, pursuant to the terms of the Declaration.

E. "Declaration" shall mean and refer to this document and all of its terms and provisions.

F. "Landscape Committee" shall mean and refer to the Landscape Committee of Montclair Subdivision, a committee of two (2) persons initially appointed by the Declarant and thereafter the three (3) persons appointed by the majority vote of all of the Lot Owners of the single-family residential lots in MONTCLAIR SUBDIVISION, as presently or hereafter depicted on plats recorded by the Declarant in the Office of the Register of Deeds of Wake County, North Carolina.

G. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map or plat of the Properties owned in fee, with the exception of any street rights-of-way shown on any such recorded subdivision map or plat of the Properties.

H. "Lot Owner" shall mean and refer to a person or persons or entity or entities who are a record owner of a fee interest in any single-family residential lot which is a part of the MONTCLAIR SUBDIVISION, including Contract Sellers or Builders who own the lot (and do not merely have it under contract).

I. "Lot Owners" shall mean and refer to all of the owners of the single-family residential lots in the MONTCLAIR SUBDIVISION.

J. "Property" or "Properties" shall mean and refer to the "Existing Property" described as "TRACT ONE" and "TRACT TWO" in the INTRODUCTION on Page 1 of the Declaration and any additional property added/annexed into the MONTCLAIR SUBDIVISION pursuant to the terms and provisions of the Declaration.

K. "Street" shall mean and refer to any street, road, drive, highway or other thoroughfare as shown on any recorded map or plat of the Properties.

L. "Subdivision" shall mean and refer to the MONTCLAIR SUBDIVISION located on the south side of Holt Road (North Carolina State Road 1612) situated in or near the Town of Apex, in the Township of White Oak, County of Wake, State of North Carolina, together with any additions thereunto annexed by the Declarant, its successors and/or assigns, pursuant to the terms and provisions of the Declaration.

ARTICLE II

SUBJECTING ADDITIONAL PROPERTY TO THE DECLARATION

A. Additions to the Properties by Declarant. The Declarant shall have the right to annex into and bring within the scheme of the Declaration additional properties which are located within any phase of MONTCLAIR SUBDIVISION, or any other property which is contiguous at any point with the Properties or any additions to the Properties. A public road, railroad, utility right-of-way, or buffer dividing two properties shall not be deemed to deprive them of contiguity.

B. Method of Making Additions to Properties (Annexation). Additions to the Property shall be made by filing for record in the Office of the Register of Deeds of Wake County, North Carolina, a Supplemental Declaration of Protective Covenants, Conditions and Restrictions (the "Supplemental Declaration") with respect to the additional property, which said Supplemental Declaration shall describe the property being annexed. Such Supplemental Declaration(s) may contain such additions and modifications of Articles V and VI of the Declaration as may, in the sole discretion of the Declarant, be necessary to reflect the different character of the added properties. In no event, however, shall such Supplemental Declaration(s) revoke, modify or add to the Restrictions established by the Declaration with respect to the Properties already subject to the Declaration, except to grant the Owners of Lots then subject to the Declaration limited rights with respect to such additional properties (changes to assessments brought about by such addition shall be deemed not to be a revocation, modification or addition of the Restrictions).

C. Future Additions of Common Areas. Future ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS may be added to the scheme of the Declaration and included within the Properties, although there is no obligation to do so, and no representations are made with respect to any such additions.

ARTICLE III

ARCHITECTURAL CONTROL AND ARCHITECTURAL COMMITTEE

A. Architectural Control.

1. Until such time as the Declarant shall no longer be a Lot Owner, no site preparation and no dwelling or other structure or other improvements (including but not limited to, streets and driveways, outbuildings, fences, mass plantings, radio and/or television antennae, mail and newspaper boxes, utility connections, and outside lighting) (hereinafter referred to collectively as the "Improvements") shall be erected, placed or altered on any Lot in the Properties, or in any addition thereto, until the Improvements' plot plans (showing the location of such Improvements on the Lot), building plans, elevation plans and building specifications (hereinafter collectively as the "Plans") have been submitted to and approved in writing by the "ARCHITECTURAL COMMITTEE OF MONTCLAIR SUBDIVISION" (hereinafter referred to as the "Architectural Committee") as to conformity with all of the Restrictions contained in the Declaration, quality, materials and as to conformity and harmony of external design with existing (and approved or proposed) Improvements in the Properties, and as to location of the Improvements with respect to topography and finished ground elevation, and the Architectural Committee has further given written approval of the location of the structures and improvements, as well as approval of the external design and materials. Such written approval of the Plans from the Architectural Committee must be obtained prior to commencing clearing, grading or construction of any kind on a Lot in the Subdivision. The Architectural Committee approval is absolute, even if arbitrary. All Improvements shall comply with the plans as presented unless changes are approved in advance and in writing by the Architectural Committee.

2. It shall be each Lot Owner's responsibility to ensure compliance with all local municipal and/or other governmental requirements as they may apply to such Lot Owner's lot and the Improvements thereon, including but not limited to, building setbacks and building permits. Each Lot Owner shall indemnify and hold Declarant and each member of the Architectural Committee harmless for such Lot Owner's failure to so comply.

3. Anything herein to the contrary notwithstanding, during the initial development of the Properties, Declarant and/or the Architectural Committee may limit the review of Plans to a review of a typical set of Plans and Specification and Materials for the proposed residence type proposed by a Contract Seller or a Builder to be built within the Subdivision, and, upon Declarant's written approval of such typical Plans, Specifications, and Materials, residences may be constructed in the Subdivision consistent with such approved Plans, Specifications, and Materials without the requirement of further review by either the Declarant or the Architectural Committee. FURTHER ARCHITECTURAL COMMITTEE APPROVAL FOR THE INITIAL IMPROVEMENTS MADE OR TO BE MADE BY THE NEW FORTIS CORPORATION ON LOTS PRESENTLY OWNED BY IT OR HEREAFTER PURCHASED BY IT FROM DECLARANT IS HEREBY WAIVED AS TO SUCH INITIAL IMPROVEMENTS MADE ON SUCH LOTS.

B. Architectural Committee. Upon or prior to the date upon which Declarant shall cease to be a Lot Owner, the Declarant shall form an "Architectural Committee of Montclair Subdivision" (herein referred to as the "Architectural Committee"), which said Architectural Committee shall initially be composed of two (2) members selected by the Declarant. Such initial members need not be Lot Owners and may be replaced by the Declarant at any time for any reason whatsoever. Such initial members of the Architectural Committee shall serve until replaced by the Declarant or until the permanent three (3) member Architectural Committee is formed as hereinafter described, whichever event shall first occur.

1. Upon the date upon which Declarant shall cease to be a Lot Owner, the number of members constituting the Architectural Committee shall be increased to three (3) and the Declarant shall appoint in writing three (3) Lot Owners to serve as the three (3) members of the permanent Architectural Committee of Montclair Subdivision. Each of the three (3) members of the Architectural Committee must be a Lot Owner of single-family residential lots in the Subdivision. Such three (3) members of the permanent Architectural Committee shall serve for a term of one (1) year. Thereafter the members of the Architectural Committee shall be elected by a majority of the Lot Owners at a meeting called by the Architectural Committee for such purpose (each single-family residential lot in the Subdivision entitles the owner(s) of such lot to one (1) vote at such meeting; if a Lot Owner owns more than one single-family residential lot in the Subdivision, such Lot Owner shall be entitled to one vote for each single-family residential lot owned by such Lot Owner). Each such new Architectural Committee member shall serve for a term of one (1) year, said term to expire upon the date of the annual meeting of the Lot Owners.

2. Each member of the Architectural Committee shall have one (1) vote and a majority vote of the Committee shall be required to constitute Architectural Committee action on any issue brought before the Architectural Committee. Upon the date upon which Declarant shall no longer be

a Lot Owner, the three (3) member Architectural Committee shall assume and be responsible for all of the duties, approvals and responsibilities set forth in Paragraph A of this ARTICLE III with regard to Architectural Control within the Properties and the Architectural Committee shall thereafter have all of the rights contained therein. Upon approval by the Architectural Committee of the Plans as herein provided, the Architectural Committee shall evidence its approval in writing, with each member of the Architectural Committee indicating his/her written approval by memorandum or directly upon such Plans and the applicant Lot Owner may then commence construction in accordance with such Plans. The Architectural Committee shall approve or reject in writing any Plans within thirty (30) business days after the receipt of the submitted Plans or such approval will be deemed to have been given.

C. Limitation of Liability. No approval or waiver of Plans by Declarant or by the Architectural Committee shall be construed as a representation, warranty or implication that the Improvements, if built in accordance therewith, will be free from defects, shall meet applicable codes and laws, or will be built in a good and workmanlike manner. Any approvals of Declarant or of the Architectural Committee shall be concerned solely with matters of aesthetics and the satisfaction of the requirements set forth in the Declaration. None of the Declarant or the Architectural Committee shall be liable or responsible to anyone submitting Plans for approval for any loss or damage arising out of or related to the approval, disapproval, waiver, or failure to approve any such Plans, the noncompliance of such Plans with applicable codes and laws, or the construction undertaken pursuant to such Plans. Approval of the Plans by Declarant or by the Architectural Committee shall not be construed as approval of any Plans, or as an indication of approval of any Plans, by the Town of Apex, North Carolina or by the Wake County, North Carolina authorities.

ARTICLE IV

MAINTENANCE ASSESSMENTS AND LANDSCAPE COMMITTEE

A. Maintenance Assessments and Maintenance of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS. The Landscape Committee of Montclair Subdivision (herein referred to as the "Landscape Committee") shall be responsible for the maintenance and upkeep of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS described in ARTICLE I hereof. The Landscape Committee shall have the following rights and duties:

1. Provide for the maintenance and upkeep, both regular and extraordinary, of all of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS within the Subdivision, such maintenance and upkeep to include, but not be limited to, mowing, weeding, trash pick-up, flower/tree/shrub replacement, subdivision monument/sign/irrigation maintenance, and payment of all water/electrical bill and other costs and expenses related to such ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS;

2. Conduct regular inspections of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS within the Subdivision to determine the maintenance and upkeep requirements for such areas and to prepare an annual plan with regard to such

maintenance and upkeep and make such plan available to each Lot Owner;

3. Prepare an annual budget with regard to such maintenance and upkeep of such areas and all administrative costs associated therewith for the upcoming year (January 1 to December 31) and make such budget available to each Lot Owner;

4. Determine the amount of assessment(s) (both annual and special assessments) which must be paid by each Lot Owner in order to fund all of the costs and expenses incurred (or to be incurred) for such maintenance, upkeep and administration;

5. Prepare and send to each Lot Owner a statement as to the amount of each assessment (both annual and special) each Lot Owner's is required to pay;

6. Collect all assessments (both annual and special assessments) from the Lot Owners;

7. Serve as the collection agent for all of the Lot Owners in the event a Lot Owner fails to pay his or her assessment when due;

8. Establish a bank account on behalf of the Landscape Committee of Montclair Subdivision and maintain all assessments collected in said bank account and pay all cost and expenses from said bank account;

9. Enter into such contracts with subcontractors on behalf of the Lot Owners to provide for the maintenance and upkeep of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS.

B. Maintenance Assessments.

1. Regular Annual Maintenance Assessment. Each Lot Owner shall pay each year a Regular Annual Maintenance Assessment in the sum of One Hundred Twenty and No/100 Dollars (\$120.00) to the Landscape Committee of Montclair Subdivision. The Regular Annual Maintenance Assessment shall be due on the 31st day of January of each year and cover the calendar year for which paid. The Regular Annual Maintenance Assessment for newly constructed homes closing during the calendar year shall be prorated, commencing on the first day of the month next immediately following the closing of the sale of the new home to the homebuyer (i.e., if a new home is closed on May 15, the Lot Owner will owe seven twelfths (7/12) of the Regular Annual Maintenance Assessment in effect during the year of closing). The Landscape Committee may increase the Regular Annual Maintenance Assessment each year by not more than five percent (5%) above the Regular Annual Maintenance Assessment for the previous year without the prior approval of the Lot Owners. Any increase in excess of the aforescribed five percent (5%) must be approved by at least two-thirds (2/3) of the Lot Owners.

2. Builder Annual Maintenance Assessment. Each single-family residential lot in the Subdivision which is owned by a builder and which is vacant or upon which such builder is constructing a new dwelling shall be subject to a Builder Annual Maintenance Assessment. Such Builder Annual Maintenance Assessment shall be equal to twenty-five

percent (25%) of the abovedescribed Regular Annual Maintenance Assessment and shall be due and payable at the closing of such lot to a homebuyer. For such closings which occur during the calendar year The Builder Annual Maintenance Assessment for a lot shall be prorated through the end of the month of closing (i.e., if a new home is closed on May 15, the Builder will owe five twelfths (5/12) of the Builder Annual Maintenance Assessment in effect during the year of closing).

3. Special Assessments. Special Assessments may be made with the vote of at least two-thirds (2/3) of the Lot Owners voting in favor of any such Special Assessment.

4. Declarant' Liability. Neither the Declarant, nor its successors or assigns, shall be required to pay any annual or special assessments for any of the lots in the Subdivision owned by Declarant, its successors and/or assigns.

5. Creation of Lien and Personal Obligation of Assessment. Declarant, for each Lot within the Properties, hereby covenants, and each Lot Owner of a single-family residential lot in the Subdivision by acceptance of the deed therefor, whether or not it shall be so expressed in the deed, covenants and agrees to pay to the Landscape Committee all assessments set forth herein, and with respect to the enforcement of payment of such assessments, hereby consents to the lien established herein. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge upon the Lot and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, reasonable attorney's fees and costs of collection thereof, shall be a personal obligation of the Lot Owner of the Lot at the time when the assessment falls due. Such personal obligation shall not pass to the Lot Owner's successors in title unless expressly assumed by them.

6. The Effect of Non-Payment of Assessments: Remedies of the Lot Owners. Each Lot Owner, other than Declarant, shall be deemed to covenant and agree to pay assessments (both Annual Assessments and Special Assessments) provided for in the Declaration, and each agrees to the enforcement of the assessments in the manner herein specified. In the event the Landscape Committee employs attorneys for collection of any assessment against a Lot Owner, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Declaration by a Lot Owner, each such Lot Owner agrees to pay interest on all delinquent amounts from the date of the delinquency through the date of payment equal to the highest rate of interest per annum by law allowed on such amount, together with reasonable attorney's fees and cost thereby incurred, as well as, any other amounts due and any other relief or remedy obtained against said Lot Owner, including reasonable attorney's fees and court costs and expenses incurred thereby. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS or by abandonment of his/her Lot. In the event of a default in payment of any such assessment when due, the assessment shall be deemed delinquent if not paid within ten (10) days, and, in addition to any other remedies herein or by law provided, the Landscape Committee and the remaining

Lot Owners may (i) enforce each such obligation in any manner provided by law or in equity, specifically including but not limited to, any of the following:

(a) Enforcement by Suit. The Lot Owners, by and through the Landscape Committee, may cause a suit at law to be commenced and maintained in the name of the Lot Owners as a group against a defaulting Lot Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the highest rate by law permitted from the date of delinquency, court costs and reasonable attorney's fees.

(b) Enforcement by Lien. There is, to the full extent permitted by law, hereby created a lien, with power of sale, on each Lot within the Properties to secure payment of any and all assessments levied against all Owners of such Lots under the Declaration, together with interest thereon at the highest rate by law provided from the date of delinquency and all costs of collection which may be paid or incurred by the Landscape Committee and/or Lot Owners in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any default in the payment of any assessment the Lot Owners, or any authorized representative of the Lot Owners, may, but shall not be required to, make a written demand for payment to the defaulting Lot Owner on behalf of the Lot Owners. Said demand shall state the date the assessment was due and the amount of delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Landscape Committee and/or the Lot Owners may elect to file such a claim of lien in the appropriate State and/or Wake County offices (i.e., Office of the Clerk of Superior Court and/or Office of the Register of Deeds of Wake County, North Carolina) on behalf of the Lot Owners against the Lot of the defaulting Lot Owner. Such a claim of lien shall be executed and acknowledged by the members of the LANDSCAPE COMMITTEE and shall contain the following information: the name of the delinquent Lot Owner; the legal description and street address of the Lot against which claim of lien is made; the total amount claimed to be due and owing for the amount of the delinquency, the interest thereon, collection costs and reasonable attorney's fees; that the claim of lien is made by the Landscape Committee and/or Lot Owners pursuant to the Declaration; and that a lien is claimed against said Lot in an amount equal to the amount stated, plus accruing interest and costs, including reasonable attorney's fees. Upon the recordation of a duly executed original or copy of such a claim of lien and the mailing a copy thereof by certified mail, postage prepaid, to said defaulting Owner at the last known address of said Lot Owner on the books of the Landscape Committee, the lien claimed therein shall immediately attach and become effective in favor the Landscape Committee and/or Lot Owners as a lien upon the Lot against which such assessment was levied and such lien shall have priority over all liens or claims created subsequent to recordation of the claim of lien thereof, except only tax liens for real property taxes

on any Lot, assessments on any Lot in favor of any municipal, county or other governmental assessment unit, and the liens which are hereinafter specifically described. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust as set forth by the laws of the State of North Carolina, as the same may be changed or amended. Any of the non-defaulting Lot Owners each shall have the power, but not the obligation, to bid in at any foreclosure sale and to purchase any such Lot and to hold, lease, mortgage and convey any such Lot purchased. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title examination fees, interest and all other costs and expenses incurred in such foreclosure, shall be allowed to the extent permitted by law. EACH LOT OWNER, BY BECOMING AN OWNER IN THE PROPERTIES, HEREBY EXPRESSLY WAIVES ANY OBJECTION TO THE ENFORCEMENT AND FORECLOSURE OF THIS LIEN IN THIS MANNER.

7. Subordination of the Lien to Mortgagees. 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 the lien for delinquent assessments; however, the sale or transfer of any Lot pursuant to a foreclosure of a first mortgage or first deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust. Any such foreclosure of a Lot shall not extinguish the personal obligation of the Lot Owner against whom such foreclosure proceeding was brought to pay any and all assessments due for such Lot.

C. Landscape Committee. The Declarant shall form a "Landscape Committee of Montclair Subdivision" (herein referred to as the "Landscape Committee"), which said Landscape Committee shall initially be composed of two (2) members selected by the Declarant. Such initial members need not be Lot Owners and may be replaced by the Declarant at any time for any reason whatsoever. Such initial members of the Landscape Committee shall serve until replaced by the Declarant or until the permanent three (3) member Landscape Committee is formed as hereinafter described, whichever event shall first occur.

1. Upon the date upon which Declarant shall cease to be a Lot Owner, the Declarant shall appoint in writing three (3) Lot Owners to serve as the three (3) members of the Landscape Committee of Montclair Subdivision. Each of the three (3) members of the Landscape Committee must be Lot Owners of single-family residential lots in the Subdivision. Such three (3) members of the Landscape Committee shall serve for a term of one (1) year. Thereafter the members of the Landscape Committee shall be elected by a majority of the Lot Owners at a meeting called by the Landscape Committee for such purpose (each single-family residential lot in the Subdivision entitles the owner(s) of such lot to one (1) vote at such meeting; if a Lot Owner owns more than one single-family residential lot in the Subdivision, such Lot

Owner shall be entitled to one vote for each single-family residential lot owned by such Lot Owner). Each such new Landscape Committee member shall serve for a term of one (1) year, said term to expire upon the date of the annual meeting of the Lot Owners. Each member of the Landscape Committee shall have one (1) vote and a majority vote of the Committee shall be required to constitute Landscape Committee action on any issue brought before the Landscape Committee.

2. Upon the date upon which Declarant shall no longer be a Lot Owner, the three (3) member Landscape Committee shall assume and be responsible for all of the duties, approvals and responsibilities set forth in Paragraphs A and B of this ARTICLE IV with regard to landscaping and maintenance of the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS within the Properties and the collections of any and all assessments therefor and The Landscape Committee shall thereafter have and exercise all of the rights contained therein.

ARTICLE V

RESTRICTIONS ON USE AND MAINTENANCE OF PROPERTY

A. Use Restrictions. Except as may be modified by a Supplemental Declaration with respect to another phase of the Subdivision, the following Restrictions and Covenants shall be applicable to the use of any Properties subject to the Declaration:

1. Land Use and Building Type - Residential Purposes Only. Each single-family residential lot in the Subdivision shall constitute a residential building site and shall be used for single-family residential purposes only. Such restriction shall not prohibit the maintenance and occupancy by any builder of any model homes, temporary sales trailers, or temporary construction trailers on the Lots used in connection with the construction and sale of new homes to homebuyers, subject to the prior approval of the Declarant. Subject to the foregoing, no buildings shall be erected or allowed to remain on any Lot except one (1) detached, single-family dwelling; provided, however, one (1) storage shed may be erected or placed at the rear of each Lot upon approval in advance by the Architectural Committee after the plans and specifications or a photograph and a plot plan showing the proposed location have been submitted in writing. The storage shed shingles and siding shall be of the same material, style and color as those of the main single-family dwelling situated on the Lot. No carport shall be erected or allowed to remain on any Lot.

2. Resubdivision of Lots. No Lot shall be resubdivided except with the prior written consent of the Declarant for so long as Declarant shall be a Lot Owner. The subdivision layout of lots on subsequently recorded maps (re-subdividing the tracts shown on the plats described in TRACT ONE and TRACT of the INTRODUCTION on Page 1 of the Declaration) shall be substantially adhered to; provided, however, that with the approval of Declarant, its successors and/or assigns, the size and shape of any building site may be altered.

3. Nuisances. No nuisance or noxious or offensive activity shall be carried on or upon the Properties or any part thereof or on any Lot, nor shall anything be done or maintained thereon which may disturb or become a nuisance to the neighborhood or occupants of adjoining property, or detract from its value as an attractive residential community. No trade materials or inventories (other than materials for construction of dwellings and other approved structures on the Lots) may be stored upon a Lot in the Subdivision. No portion of a Lot shall be used for business, manufacturing or commercial purposes, nor shall any merchandise be kept or allowed to remain on a Lot for commercial purposes. No mobile homes, manufactured homes, tractors, inoperational motor vehicles, rubbish, trash, or unsightly materials of any kind may be stored, regularly placed, or allowed to remain on a Lot or on the streets in the Subdivision. No travel trailers or other recreational vehicles or boats or commercial vans or trucks or trailers shall be stored or allowed to remain on any Lot, unless such vehicles are stored within a garaged area. Each Owner shall maintain his or her buildings, improvements, landscaping and grounds in a safe, clean and orderly fashion.

4. Animals. No birds, animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the Properties or any part thereof or on any Lot, except that dogs, cats or other household pets may be kept, bred or raised solely as domestic pets and not for commercial purposes. When exercising such domestic pets they shall not be permitted to run at large, but shall be kept under the strict control of the Owner of such pets or his/her guests by leash, cord or chain. Except when exercising such domestic pets, all such domestic pets must be kept within the confines of the dwelling or within a fenced-in area on the Lot. The Owner of any pet shall immediately remove excrement deposited by said pet upon the public streets. Habitual barking, howling, yelping or otherwise noisy pets shall be deemed a nuisance. No horses or barnyard animals shall be kept or allowed to remain on any of the Properties or any part thereof or on any Lot at any time.

4. Dwelling Size. No dwelling shall be erected or allowed to remain on a Lot in the Subdivision if the heated floor area of the main structure, exclusive of open porches, breeze-ways and garages, shall be less than One Thousand Seven Hundred (1,700) square feet. The Declarant reserves the right to waive in writing any minor violation of the requirements of this subparagraph 4 provided such violation does not exceed ten percent (10%).

5. Building Setbacks. Setback requirements for the dwellings to be erected on any of the Lots in the Subdivision shall be in accordance with the setback requirements noted on the plats of the Lots in the Subdivision as now or hereafter recorded in the Office of the Register of Deeds of Wake County, North Carolina.

6. ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS. No Lot Owner or occupant shall remove or significantly alter any tree or landscaping in any street, right-of-

way, or other part of the ENTRYWAY EASEMENTS/STREET-SCAPE BUFFER AREAS unless permission in writing is first granted in writing by the LANDSCAPE COMMITTEE.

8. Waste. No part of the Properties and No Lot shall be used or maintained as a dumping ground for rubbish, grass clippings, garbage or trash. Garbage and other waste shall be kept in sanitary containers.

9. Parking and Unauthorized Vehicles. No parking in the Subdivision shall be permitted except in designated areas. Adequate off-street parking shall be provided by each Lot Owner for his or her Lot for the parking of vehicles owned and/or controlled by the Lot Owner and members of the Lot Owner's family. Trucks with tonnage in excess of one (1) ton shall not be permitted to park or remain on any streets of the Subdivision or on the driveways on any Lot or on any Lot overnight, except that construction vehicles utilized in the construction or repair of the dwellings on the Lots may be temporarily parked on the streets of the Subdivision and on the Lots provided such vehicles do not unduly interfere with the flow of traffic over said streets. No vehicle of any size which normally transports inflammatory or explosive cargo may be kept in the Subdivision at any time. No manufactured home and no mobile home, other than a mobile home used as a temporary sales office or construction office for dwellings being constructed in the Subdivision, shall be placed or allowed to remain on any Lot or on any of the Properties.

10. Driveways and Walkways. No driveways or parking areas, with the exception of the model and sales and construction office parking lots, will be allowed or permitted to remain on any Lot with a gravel finish.

11. Temporary Structures, Mobile Homes, Modular Homes, Manufactured Homes, etc. No mobile home, modular home, manufactured home and no structure of a temporary character or nature shall be erected or allowed to remain on any Lot. No basement (unless said basement is part of a dwelling erected at the same time the dwelling is erected), tent, shack, mobile home, barn or other outbuilding erected on a Lot shall be used as a residence either temporarily or permanently.

12. Fences, Hedges, Screen Plantings and Walls. No fence, hedge, screen planting, retaining wall or screening wall shall be erected or permitted to remain on any Lot until such structure has been approved in writing by the Architectural Committee as to location and style. All fences, hedges, screen plantings and walls on Lots shall be maintained in good repair and in a clean, attractive manner and, if painted or stained, shall be in a color in harmony with the Subdivision.

13. Trampolines, Swingsets and Below-Ground and Above-Ground Swimming Pools. No trampolines, swingsets or below-ground swimming pool or above-ground swimming pools shall be erected or permitted to remain on any Lot until such structure has been approved in writing by the Architectural Committee.

14. Signs. No sign of any kind shall be displayed to the public view on any Lot in the Subdivision except one (1) sign of not more than five (5) square feet placed in the yard of a Lot advertising the property for sale, or signs used by the builder to advertise the property and direct construction during the construction and sales period. Declarant or its agents, or the Architectural Committee should Declarant cease to be a Lot Owner, shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal.

B. Waiver of Violations. The Declarant, or the Architectural Committee should the Declarant no longer be a Lot Owner, shall have the power and right to waive any violation of the terms and provisions of the Declaration, such waiver to be in writing and to be recorded in the Office of the Register of Deeds of Wake County, North Carolina. Upon recordation of such waiver such violation shall be deemed thereafter not to exist.

ARTICLE VI

RESTRICTIONS ON USE OF PROPERTIES BY DECLARANT

So long as Declarant shall be a Lot Owner or shall own any interest in the Properties, Declarant hereby specifically excepts, excludes and reserves for itself, its successors and/or assigns, the following from each and every conveyance as if set out fully in each deed and instrument of conveyance executed and delivered by it to the Lot Owner of a Lot in the Subdivision.

A. Sales Activities. The Declarant shall have the right for itself, its successors and/or assigns, and the power to grant to one or more Contract Sellers or Builders the right to maintain sales and administration offices, construction offices or trailers and model homes with parking facilities on the Properties and to conduct sales activities and marketing therein and thereon.

B. Construction and Completion. The Declarant shall have the right, for itself, its successors and/or assigns, but not the obligation, (i) for itself, its successors and/or assigns, and the power to grant to one or more Contract Sellers or Builders the right to construct and complete the construction of single-family residential homes, buildings, drives, lanes, roads and all other improvements on the Properties; (ii) to repair and maintain the easement areas; (iii) to use and excavate the surface and subsurface of the ground for the erection, construction and installation of improvements and foundations, footings, floorings and basements; (iv) to extend the drives, lanes, streets and roads located, or to be located, on the Properties; (v) to lease or rent such residences; (vi) to sell, grant and convey title to purchases such subsequently constructed residences; (vii) to use and occupy so much of the Properties as may be necessary for the construction, reconstruction, maintenance and operation of any of said residences, Lots and easement areas and other improvements, including but not limited to, the right to locate, install, maintain and repair all utilities and utility lines necessary for such

construction, reconstruction, maintenance and operation; and (viii) to convey to any town, county, water district, sanitary sewer district or other municipal or quasi-municipal or private corporation all sewer lines and mains and water lines and mains and pipelines and wells and affiliated structures constructed or to be constructed on the Properties, together with suitable easements and/or rights-of-way over said lines and sites for the required installation, maintenance, repair, replacement and operation thereof.

C. Erosion Control. During site preparation and construction on a Lot, the Lot Owner of such Lot (including Contract Sellers and Builders) shall take such action to control erosion on such Lot and sedimentation of streams resulting from erosion on such Lot as may be required by the Declarant, its successors and/or assigns, or by any governmental authority charged with responsibility therefor. If the Owner of such Lot fails to maintain such erosion and/or sedimentation controls on such Lot, the Declarant, its successors and/or assigns, may cause the required action/work to be completed and charge the Owner of such Lot for all costs and expenses incurred in the completion of such action/work, including but not limited to, court costs and reasonable attorney's fees incurred to collect such costs and expenses.

D. Easements. Easements for installation, maintenance, repair, replacement and operation of utilities and drainage facilities and for Subdivision entrance signs and landscaping are reserved unto the Declarant, its successors and/or assigns, as shown on the recorded plats/maps of the Subdivision. Declarant, for itself, its successors and/or assigns, reserves the right to relocate existing easements described herein if necessary for the development of the building sites in the Subdivision and further reserves an easement for and the right at any time in the future to grant rights-of-way for the installation, maintenance, repair, replacement and operation of public and/or private utilities across, on or under each Lot at a distance of not more than ten (10) feet from the front, rear, and side lines of each Lot.

Declarant, for itself, its successors and/or assigns, reserves all easements, including the right of entry, necessary to inspect and perform work, or cause such work to be performed, in connection with its rights set forth in Paragraph B of this ARTICLE VI ("Erosion Control").

E. Street Lighting and Cablevision. Declarant, for itself, its successors and/or assigns, reserves the right to subject the Lots in the Subdivision to a contract with the Town of Apex, North Carolina for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the Town of Apex, North Carolina by the Lot Owner of each Lot in the Subdivision.

Declarant further reserves for itself, its successors and/or assigns, the right to subject the Lots to a contract with one or more cablevision companies for the installation of underground cablevision lines.

ARTICLE VII

EASEMENTS AND RIGHTS

A. General Easement. Declarant, for itself, its successors and/or assigns (for so long as Declarant shall own any "Declarant's Property") reserves the right and easement to use the ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS and any Lot, or any portion thereof, as may be needed for repair, maintenance and/or construction on such Lot or ENTRYWAY EASEMENTS/STREETSCAPE BUFFER AREAS.

B. Drainage Easements. Each Owner acknowledges and covenants to honor and provide such easements for drainage and waterflow as are shown on the recorded plats/maps of the Properties.

C. Utility Easement. An easement of ingress, egress and regress is hereby granted on all Lots in favor of any utility company for the purpose of repair, construction and maintenance of all utility lines; provided, however, no new utility lines may be constructed or no existing utility line may be relocated without the prior approval of the Declarant or of the Architectural Committee should the Declarant no longer own any "Declarant's Property".

ARTICLE VIII

GENERAL PROVISIONS

A. Revocation and Amendment. For so long as the Declarant, its successors and/or assigns, shall be a Lot Owner, Declarant, its successors and/or assigns, shall have the right to amend any of the terms and provisions of the Declaration, so long as any such amendment is not in violation of any municipal requirements of the Town of Apex. Such amendment or revocation shall be effective when duly recorded in the Office of the Register of Deeds of Wake County, North Carolina. During the time Declarant, its successors and/or assigns, shall be a Lot Owner, no modification and/or amendment of any provision of the Declaration shall be effective unless and until approved in writing by the Declarant, its successors and/or assigns.

Thereafter, the Declaration shall not be revoked nor shall any of the terms and provisions thereof be amended unless approved in writing by at least two-thirds (2/3) of the Lot Owners voting in person or by proxy on such matter at a meeting called for such purpose, written notice of which shall be given to all Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting. Such amendment or revocation shall be effective when duly recorded in the Office of the Register of Deeds of Wake County, North Carolina.

B. Term. The covenants, conditions and restrictions of the Declaration shall run with and bind the land subject to the Declaration, and shall inure to the benefit of and be enforceable by the Declarant and the Lot Owners, their legal representatives, successors and assigns, until January 1, 2030, after which time the Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the majority of the then Lot Owners of the Lots has been recorded in the Office of the Register

of Deeds of Wake County, North Carolina, agreeing to change the Declaration in whole or in part.

C. Severability. Invalidation of one or more of the terms and provisions of the Declaration by judgment or court decree/order shall not affect any other provisions, all of which shall remain in full force and effect.

D. Waiver of Enforcement and Enforcement. Waiver of enforcement of any provision contained in the Declaration shall be limited to that particular provision and shall not be construed to be a waiver of any other provision. All waivers shall be in writing. Enforcement of any of the terms and provisions of the Declaration shall be by proceedings in law or in equity against any person or persons or entity or entities violating or attempting to violate any term and/or provision, either to restrain violation or to recover damages.

E. Assignment by Declarant. The Declarant shall have the right to assign its rights under the Declaration, in whole or in part, to any person or entity by an express transfer of such rights, including but not limited to, the right to transfer Declarant's powers under Article III herein to an Architectural Committee.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

MONTCLAIR, L.L.C.,
a North Carolina Limited
Liability Company

By: Thomas C. Hankins (SEAL)
Thomas C. Hankins,
Managing Member

By: Glenn Futrell (SEAL)
Glenn Futrell,
Managing Member

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, the undersigned Notary Public of the County and State aforesaid, hereby certify that THOMAS C. HANKINS and GLENN FUTRELL, the Managing Members of MONTCLAIR, L.L.C., a North Carolina Limited Liability Company, personally came before me this day and acknowledged that they are the Managing Members of MONTCLAIR, L.L.C.; that by authority duly given and as the act of the Limited Liability Company, the foregoing Declaration was signed in its name by each of them as its Managing Members.

WITNESS my hand and official stamp or seal, this 6th
day of August, 1998.

Deborah E. Freudenberger
Notary Public

My commission expires: 6-9-2001

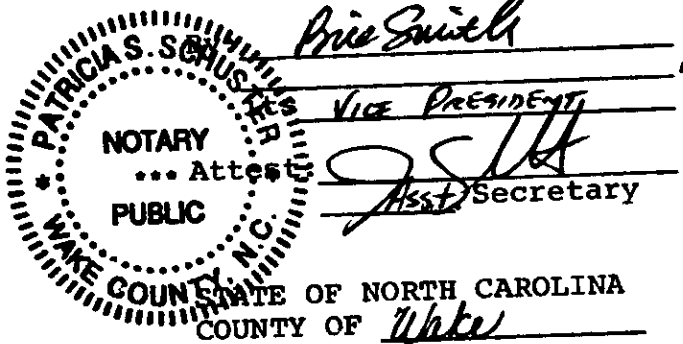
CONSENTED AND AGREED TO:

The undersigned BRANCH BANKING AND TRUST COMPANY, a North Carolina Banking corporation (hereinafter referred to as the "Bank"), and B. GARRETT THOMPSON, Trustee, hereby each acknowledge each and every term and provision of the foregoing Declaration and agrees that the lien of the Bank's first Deed of Trust on the Property described in the Declaration attached hereto and incorporated herein by reference, which said Deed of Trust is recorded in Book 7406, Page 408, Wake County Registry, North Carolina, shall be and is hereby subordinated to all of the terms and provisions of the foregoing Declaration.

IN WITNESS WHEREOF, the Trustee has hereunto set his hand and seal, and the Bank has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Boards of Directors, this the 7th day of August, 1998.

BRANCH BANKING AND TRUST
COMPANY, a North Carolina
Banking corporation

B. Garrett Thompson (SEAL)
B. GARRETT THOMPSON, Trustee



I, the undersigned Notary Public of the County and State aforesaid, certify that B. GARRETT THOMPSON, Trustee, personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes stated therein. WITNESS my hand and official stamp or seal, this 7th day of August, 1998.

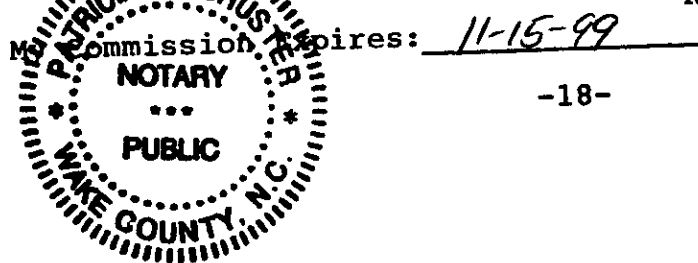
Patricia S. Schuster
Notary Public

My Commission Expires: 11-15-99

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, certify that J. Craig Smith personally came before me this day and acknowledged that he/she is Asst. Secretary of BRANCH BANKING AND TRUST COMPANY, a North Carolina Banking corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him/her as its Asst. Secretary. WITNESS my hand and official stamp or seal, this 7th day of August, 1998.

Patricia S. Schuster
Notary Public



CONSENTED AND AGREED TO:

The undersigned THE NEW FORTIS CORPORATION, a North Carolina corporation (hereinafter referred to as "Fortis") hereby acknowledges each and every term and provision of the foregoing Declaration and agrees that all of the real property presently owned by Weekley in the MONTCLAIR SUBDIVISION, to wit: BEING all of Lots 43, 45, 49, 51, 52, and 53 in MONTCLAIR SUBDIVISION, PHASE 1-SECTION 1, as shown and identified on that certain plat entitle "SUBDIVISION MAP OF MONTCLAIR PHASE 1-SECTION 1", recorded in Book of Maps 1998, Page 629, Wake County Registry and BEING all of Lots 32, 35, 36, 37, 38, 40 and 41 in MONTCLAIR SUBDIVISION, PHASE 1-SECTION 2, as shown and identified on that certain plat entitled "SUBDIVISION MAP OF MONTCLAIR PHASE 1-SECTION 2", recorded in Book of Maps 1998, Page 630, Wake County Registry, shall be held, conveyed, transferred and sold subject to all of the terms and provisions of the foregoing Declaration, and that Fortis shall be bound by and shall comply with each and every term and provision of the foregoing Declaration.

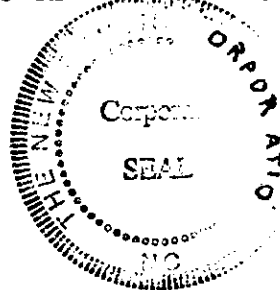
IN WITNESS WHEREOF, THE NEW FORTIS CORPORATION has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Boards of Directors, this the 15th day of September, 1998.

THE NEW FORTIS CORPORATION,
a North Carolina corporation

By: R. Randolph Reid
its Vice President

Attest: James R. Allen
Asst. Secretary

(CORPORATE SEAL)



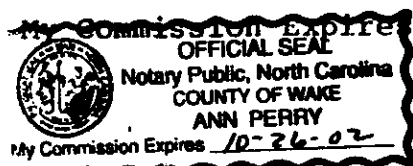
STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, certify that James Odum personally came before me this day and acknowledged that he/she is Asst't Secretary of THE NEW FORTIS CORPORATION, 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 Vice President, sealed with its corporate seal and attested by him/her as its Asst't Secretary.

WITNESS my hand and official stamp or seal, this 15th day of September, 1998.

Ann Perry
Notary Public



Montclair/CORP12

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of James E. Freudenberger is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the first and page shown on the first page hereof.
LAURA M. PIERCE, Register of Deeds
Ann Perry, Deputy Register of Deeds