Wake County,NC 352
Laura M Riddick, Register Of Deeds
Presented & Recorded 01/20/2000 14:09:38
Book : 008505 Page : 01995 - 02024

Typed by and mail after recording to
(or hold for) Oliver W. Alphin, P.A. Box
1426 E. NC Hwy 54, Suite B
Durham, NC 27713

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALLS COMMONS TOWNHOMES

CONTENTS

		Beginning Page No.
PREAMBLE		1
ARTICLE I	**DEFINITIONS**	2
Section 1 -	Association	
Section 2 -	Common Area	
Section 3 -	Declarant	
Section 4 -	Lot	
Section 5 -	Member	
Section 6 -	Owner	
Section 7 -	Properties	
Section 8 -	Unit or Dwelling	
ARTICLE II	**PROPERTY SUBJECT TO THIS DECLARATION**	3
Section 1 -	Existing Property	
Section 2 -	Annexation by the Declarant	
Section 3 -	Annexation by the Members	
Section 4 -	Conveyance of Common Area in Annexed Areas	
ARTICLE III	**MEMBERSHIP AND VOTING RIGHTS**	5
Section 1 -	Membership	
Section 2 -	Voting Rights	
ARTICLE IV	**PROPERTY RIGHTS**	6
Section 1 -	Owners' Easements of Enjoyment and Access	
Section 2 -	Delegation of Use	
Section 3 -	Conveyance of Title to the Association	
Section 4 -	Regulation and Maintenance of Common Area	
ARTICLE V	**COVENANT FOR MAINTENANCE ASSESSMENTS**	9
Section 1 -	Creation of the Lien and Personal Obligation of Assessments	
Section 2 -	Purposes of Assessments	

Section 3 -	Maximum Annual Assessment	
Section 4 -	Special Assessments	
Section 5 -	Assessment Rate; Collection Period	
Section 6 -	Notice and Quorum for any Action Authorized Under Sections 3 and 4	
Section 7 -	Date of Commencement of Annual Assessments; Amount of Initial Annual Assessments; Amount of subsequent Annual Assessments; Certificate of Payment;	
Section 8 -	Effect of Nonpayment of Assessments; Remedies	
Section 9 -	Subordination of the Lien to Mortgages	
Section 10 -	Exempt Property	
Section 11 -	Working Capital Fund	
ARTICLE VI	**RIGHTS OF LENDERS**	13
Section 1 -	Books and Records	
Section 2 -	Notice to Lenders	
Section 3 -	Approval of Owners and Holders of First Deeds of Trust	
Section 4 -	Payment of Taxes and Insurance Premiums	
ARTICLE VII	**EASEMENTS**	14
Section 1 -	Access and Utility Easements	
Section 2 -	Easements for Governmental Access	
Section 3 -	Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction	
Section 4 -	Association's Easement and Right of Entry	
ARTICLE VIII	**ARCHITECTURAL CONTROL**	15
ARTICLE IX	**MAINTENANCE OF LOTS AND UNITS**	16
Section 1 -	Association's Responsibility	
Section 2 -	Owner's Responsibility; Remedy for Owner's Failure to Maintain	
Section 3 -	Assessment of Cost	
Section 4 -	Access at Reasonable Hours	
Section 5 -	Party Walls	
ARTICLE X	**USE RESTRICTIONS**	19
Section 1 -	Prohibited Uses	
Section 2 -	Prohibited Activities; Businesses	
Section 3 -	Temporary Structures	
Section 4 -	Signs	
Section 5 -	Animals	
Section 6 -	Antennae; Satellite Dishes	
Section 7 -	Clotheslines	
Section 8 -	Garbage; Unsightly Storage	
Section 9 -	Lease of Dwelling	
Section 10 -	Parking	
Section 11 -	Fines	
Section 12 -	Adoption of Rules	

ARTICLE XI **GENERAL PROVISIONS** 22
Section 1 - Enforcement
Section 2 - Severability
Section 3 - Amendment
Section 4 - FHA/VA Approval
Section 5 - Non-Liability of the Governmental Entities
Section 6 - Subdivision of Lots
Section 7 - Declarant's Right to Change Development TWO
Section 8 - Insurance

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FALLS COMMONS TOWNHOMES

THIS DECLARATION is made on the date hereinafter set forth by **C & G DEVELOPMENT TWO, LLC**, a North Carolina Limited Liability Company, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant has heretofore acquired certain real property located in Wake County, North Carolina, more fully described in the deed recorded in Book _____, Page _____, Wake County Registry, which Declarant is currently developing into a residential townhouse community known as FALLS COMMONS TOWNHOMES (hereinafter sometimes referred to as "FALLS COMMONS" or the "Subdivision");

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

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the FALLS COMMONS TOWNHOMES HOMEOWNER'S ASSOCIATION, INC., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in Section 1 of Article II of this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the FALLS COMMONS TOWNHOMES HOMEOWNER'S ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Properties. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein. Common Area shall include without limitation open space, private streets, sewer lines, water lines, located outside any public street or located outside any City of Raleigh sanitary sewer easement or stormwater retention or detention facilities and storm drainage pipes serving more than one lot and located outside any public street.

Section 3. "Declarant" shall mean and refer to C & G DEVELOPMENT TWO, LLC. It shall also mean and refer to any person, firm or corporation to whom or which declarant shall assign or delegate the rights and obligations of Declarant by an Assignment of Declarant's Rights recorded in the Wake County Registry.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 5. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation. Any reference to an Owner in the masculine gender shall be deemed to include the feminine gender, and any reference to an Owner in the singular shall be deemed to include the plural, and vice versa.

Section 7. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant said Article II.

Section 8. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether as Owners or tenants or lessees of the Owner thereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE FALLS COMMONS TOWNHOMES HOMEOWNER'S ASSOCIATION, INC.

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

Section 2. Annexation by the Declarant.

a. Annexation Without Consent of the Members. At any time prior to December 31, 2005, additional lands within the property described in Exhibit B to this Declaration (hereinafter the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the Property to be annexed, provided, however, that such property must be contiguous to property already subject to this Declaration and must be approved by the City of Raleigh and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Any or all of the Exhibit B Property may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

b. Annexation With Consent of the Members. At any time that Declarant owns any land within the Properties, Declarant may, with the consent of the Members as set forth in this subparagraph, annex additional property not within the boundaries of the Exhibit B Property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the Class A votes cast, in person or by proxy, at a duly-called meeting of the Members at which a quorum is present, which meeting shall have been conducted pursuant to a Notice of Meeting which shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of

Annexation executed by the Declarant and the Association extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the City of Raleigh and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE FALLS COMMONS TOWNHOMES HOMEOWNER'S ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the Falls Commons Townhomes Homeowner's Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to vote on the proposed annexation into the Association of the following property:

[Property Description as set forth in the Notice of Meeting]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of annexation;, and _____ votes were cast against annexation. Accordingly, the motion to annex the property described above was approved.

_____
[President/Secretary]

Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

Section 3. Annexation by the Members. At any time after December 31, 2005, the Members may annex additional property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than two-thirds (2/3) of the Members of the Association at a duly-called meeting of the members, which meeting shall have been conducted pursuant to a Notice of Meeting which Notice shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration of Annexation executed by the Association extending the operation and

effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the City of Raleigh. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in form substantially similar to that set forth in Section 2.b of this Article II.

Any property annexed pursuant to this Section 3 may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

Section 4. Conveyance of Common Area in Annexed Areas. All common areas located in any annexed area shall be conveyed to the Association prior to the sale of any lot within the annexed area. All Common Areas shall be conveyed in the same manner and subject to the same exceptions as set forth in Article IV, Sec. 3 of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and by any builder(s) who or which acquires such Lot(s) from the Declarant for the purpose of constructing a residence thereon and which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. Declarant and such builder(s) shall be entitled to three (3) votes for each Class B Lot owned by them.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur.

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, however, that all Lots owned by the Declarant and the builder(s) shall revert to Class B Lots and thereby be reinstated with all rights, privileges and responsibilities of such Class if, after the conversion of Class B Lots to Class A Lots, additional Lots within the Properties are formed by the recording in the Wake County Registry of a new map of Lots as set forth in Article II hereof, thus making Declarant and the builder(s) the Owners, by virtue of the newly-recorded Lots and of other Lots owned by Declarant and the builder(s), of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or

(2) on December 31, 2005.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

ARTICLE IV

PROPERTY RIGHTS

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

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

(b) the right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association, without the consent of the Members, from granting easements upon, over, under and across the Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Subject to the provisions of subparagraph (e) below, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another non-profit corporation organized for similar purposes.

(d) the right of the Association with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, with the consent of the City of Raleigh, Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

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

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

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

All rights conferred by this section are subject to the right of the Association to make suspensions in accordance with Article IV, Sec. 1(b)."

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey fee simple title to the Common Area within each phase or section of the Subdivision to the Association prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area until December 31, 2005 for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area Easements. Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Association as provided in Article VIII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

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

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the

Common Area is preserved to the perpetual benefit of the Owners within the Property and, to that end, shall: (i) Maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the owner within the Property; (ii) procure and maintain adequate liability insurance, in an amount not less than $1,000,000.00, covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common area, (ii) exterior maintenance and repair of the dwellings situated upon Lots; (iii) repair and reconstruction of improvements on the Common Area, including storm water infiltration devices and other storm water retention, detention and drainage facilities constructed on or serving the Properties, including but not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment,

materials, management and supervision thereof; (iv) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (v) maintenance, replacement, repair and reconstruction of such portions of the Lots and the improvements and landscaping installed thereon as the Association may deem proper; (vi) procurement and maintenance of insurance in accordance with the Section 4(b) of Article IV and Section 8 of Article XI of the Declaration; (vii) employment of attorneys, accountants, managing agencies, and other persons or firms to represent the Association when necessary; (viii) payment of the principal and interest on funds borrowed for Association purposes; and (ix) such other needs as may arise; (x) maintenance, improvement, repair and replacement of private streets.

Section 3. Maximum Annual Assessment. Until January 1, 2000, the maximum annual assessment shall be $1,080.00 per Class A Lot ($90.00 per month) and, subject to the provisions of Sections 3(c) and 3(d), below, $270.00 per Class B Lot ($22.50 per month).

(a) From and after January 1, 2000, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by each class of Members, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero); provided however, that, except as otherwise provided in this Declaration, the assessment established for each Class B Lot shall always be one-fourth (1/4) of the assessment for a Class A Lot.

A Class B Lot (i.e., a Lot owned by the Declarant or a builder who purchased such Lot from the Declarant) shall be assessed at the Class B rate until a dwelling constructed thereon is occupied as a residence pursuant to a certificate of occupancy issued by the appropriate governmental agency; thereafter it shall be assessed at the Class A rate. Such Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant or such builder. It is the intent of the foregoing that a Lot containing a dwelling owned by the Declarant or a builder and used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant or a builder if it is occupied as a residence.

In the event that Class B Lots are converted to Class A Lots, or Class A Lots are reconverted to a Class B Lots, the assessment with respect to such Lots shall be prorated and charged according to their class as of the date of each conversion and reconversion.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement for which the Association is responsible, including, if appropriate, fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Members and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Assessment Rate; Collection Period. Annual and special assessments shall be fixed at a uniform rate for all Lots within each Class (each Class being subject to a different level of assessment pursuant to Section 3 of this Article) and may be collected on a yearly, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. Notice of Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the recording of the plat of that phase. Unless a lower amount is set by the Board of Directors, the first annual

assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least twenty-five (25) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

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

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charges as the Board of Directors may from time to time establish. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. Additionally, any Judgment for the Association may accrue interest at the legal rate. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. T h e liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure of a mortgage or deed of trust shall extinguish the lien of such assessments 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 for the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6)of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such dwelling and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI

RIGHTS OF LENDERS

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

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

(a) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;

(b) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or

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

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five per cent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this

clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Association, with the consent of the City of Raleigh, from exchanging Common Area for other property as provided in Section 1(e) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

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

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

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

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

ARTICLE VII

EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve or grant easements over the Common Area as provided in Article IV, Section 1(c), of the Declaration. Within any such easement herein provided, no structure, trees or shrubs, or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area, private streets, and every Lot within the Properties for the benefit of applicable governmental agencies for: installing, removing and reading water meters; maintaining and replacing water, and sewer facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, subcontractors, and invitees, shall have a perpetual access easement over the each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association as provided in Article IX of this Declaration.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, re-roofing, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior re-painting, or addition to or change or alteration therein be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or relandscaping of any Lot be commenced or made (such

construction, alteration, and landscaping are hereinafter referred to as the "Improvement") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Declarant shall have the right to charge a reasonable fee, not to exceed $75.00, for receiving and processing each application. The Declarant shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. The Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of Development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association or to any other person(s) or firm(s). Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment of Declarant's Rights. Declarant shall delegate such authority to the Association (which may, in turn, delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board of Directors of the Association), not later of the date upon which Declarant no longer owns any Lots within the Properties or December 31, 2005, whichever is earlier. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to any such assignee of Declarant's rights. Nothing herein shall be construed to permit interference with the Development of the Lots by Declarant in accordance with its general plan of Development.

ARTICLE IX

MAINTENANCE OF LOTS AND UNITS

Section 1. Association's Responsibility - Exterior Maintenance. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall provide exterior maintenance upon each dwelling on each Lot which is subject to assessments hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces. Such exterior maintenance shall not include

glass surfaces or subsurface leakage into basement areas or crawlspace. Further, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, Association or the builder who constructed the initial improvements on such Lot(s), and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping), provided however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence installed; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity.

The Association shall have no responsibility for insuring any Unit or other improvements on any Lot, and shall not be liable for any damage to any Unit, except such damage caused by the Association, its duly authorized agents or employees.

The Association shall have the right (but not the obligation), by the affirmative vote of a majority of the Members of each Class, to accept certain items, areas or improvements on a Lot for maintenance by the Association, including, but not limited to, Yard Improvements installed by an Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Lot, as the Association might establish in such written acceptance.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair. If an Owner does not perform exterior maintenance of his Lot and Unit not otherwise the responsibility of the Association, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, to enter upon such Lot and to repair, maintain, and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance plus a surcharge of 15% for administration shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i)

the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than thirty (30) calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article IX.

Section 3. Assessment of Cost. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests or invitees, or is caused by fire, lightning, windstorm, hail, flood, or other natural disaster, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject under Article V hereof, enforceable under the terms thereof; or in the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article IX, the cost of any such maintenance, replacement or repairs shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 4. Access at Reasonable Hours. In order to enable the Association to accomplish the foregoing there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. The Association, through its duly authorized agents or employees, as provided in Section 4 of Article VII of this Declaration, shall have the right, after reasonable oral or written notice to the Owner, to enter upon any Lot at reasonable hours on any day.

Section 5. Party Walls. Each wall which is built as a part of the original construction of the townhomes upon the property and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall

contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provisions of this Section, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors in title.

Every owner shall have an easement and right of entry upon the lot of any other owner to the extent reasonably necessary to perform repairs, maintenance, or reconstruction of a party wall. Such repair, maintenance or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot or lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

If any owner desires to sell refinance, or otherwise obtain a loan on his Lot, he may, in order to assure a prospective purchaser or Lender that no adjoining owner has a right of contribution as provided in this Section request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without damage. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

In the event of any dispute arising concerning a party wall, or under the provisions of this Section, such dispute shall be settled by arbitration as provided under the laws of the state of North Carolina as they now are or are hereafter amended.

ARTICLE X

USE RESTRICTIONS

Section 1. Prohibited Uses. No Lot or dwelling constructed thereon shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations.

Section 2. Prohibited Activities; Businesses. No noxious or offensive trade or activity shall be carried on or in any Lot or Unit, nor shall anything be done thereon or therein which may be or become an annoyance or nuisance to the neighborhood. No business

trade or activity may be conducted on any Lot (except a model home or sales center maintained by Declarant or a builder) unless permitted by the Board of Adjustments of the City of Raleigh.

Section 3. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 4. Signs. Except as otherwise required by the City of Raleigh, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant or a builder to advertise Lots and/or Dwellings for sale during the construction and sales period, one sign of not more than six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before election and shall be removed within two (2) days after such election.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Unit, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. As provided in Section 12 of this Article X, the Board of Directors of the Association shall have the right and authority to adopt rules and regulations which further limit or prohibit the types of animals or household pets which may be kept or maintained on a Lot or in a Unit and which limit or prohibit such animals upon Common Area.

Section 6. Antennae; Satellite Dishes. No satellite receiver or disc and no radio or television transmission or reception towers or antennae shall be erected on a Lot unless approved as provided in Article VIII of this Declaration.

Section 7. Clotheslines. No clotheslines may be erected or maintained on any Lot.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the Unit in such a manner as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to

the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 9. Lease of Dwelling. The Owner of a Unit may lease or sublet the premises. However, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions and Restrictions for the Falls Commons Townhomes, recorded in the Wake County Registry. Tenant acknowledges that he/she/they has/have received a copy of such Declaration and is/are familiar with the provisions of same"

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association a copy of any leases or subleases of his/her unit.

Section 10. Parking. No Owner or his family, lessee or sublessee of an Owner shall: (i) park any vehicle on the street within or adjoining Falls Commons Townhomes except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Property any abandoned, partly disabled or inoperative vehicle; (iii) park or keep on any Lot or any street within or adjoining the Property any bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else, not otherwise allowed under this Section, other than normally intended to be a private passenger vehicle within the Property; or (iv) park or keep, anywhere other than in the enclosed garage, any boat or boat trailer, motor home, camper, or other recreational vehicle.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the owner of the Lot to which such vehicle is registered.

Section 11. Fines. The Board of Directors shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 12. Adoption of Rules. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within Falls Commons Townhomes and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulation become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than seventy-five (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty percent (50%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article IX, by the Federal Housing Administration or Veterans Administration, and is recorded in the Office of the Register of Deeds of Wake County. No amendment shall be effective unless it is first approved by the Raleigh City Attorney or his or her deputy.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then, as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"):

annexation of additional property, mortgaging of Common Area, dedication, exchange, or otherwise deeding of Common Area to persons other than the Association, and amendment of this Declaration.

Section 5. Non-Liability of Governmental Entities. Neither the City of Raleigh nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Properties of any Lot therein due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant or any Lot. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 6. Subdivision of Lots. No Lot within the Property may be subdivided by sale or otherwise as to reduce the total lot area shown on the recorded plat of the Property, except by and with consent of the Declarant and, if required, by the City of Raleigh. Declarant's consent shall not be required after December 31, 2005; thereafter consent shall be obtained from the Association or its Architectural Committee.

Section 7. Declarant's Right to Change Development. With the approval of the City of Raleigh, and, if required, by FHA or VA, and subject to such terms and conditions as the City of Raleigh may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from the Property.

Section 8. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than $1,000,000.00. The Association shall also procure and maintain hazard insurance for real and personal property owned by the Association or for which the Association is otherwise responsible in an amount not less than 100% of the insurable value of said real and personal property, and shall procure and maintain officers' and directors' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of the Declaration.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal by its duly authorized representatives, as of this the 30 day of DECEMBER, 1999.

C & G DEVELOPMENT TWO, LLC
a North Carolina Limited Liability Company

By: _____ (SEAL)
W. Kent Cummings, Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, GREGORY A. FERGUSON, a Notary Public of the County and State aforesaid, certify that W. Kent Cummings as Manager of C & G DEVELOPMENT TWO, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and behalf of C & G DEVELOPMENT TWO, LLC.

Witness my hand and official stamp or seal, this 30 day of DECEMBER, 1999.

My commission expires:

1-20-2003

_____
Notary Public

GREGORY A. FERGUSON NOTARY PUBLIC WAKE COUNTY, NC

EXHIBIT A

Being all of that property containing 10.43 acres acres, more or less, and shown on Maps 1 and 2 entitled "Subdivision Plat, PHASE 1 of FALLS COMMONS TOWNHOMES", said maps being dated August 12, 1999, having been prepared by Rice & Associates, and now on file in the Office of the Register of Deeds of Wake County in Book of Maps 1999 at pages 2373 and 2374, to which maps reference is hereby made for a more particular description of same.

EXHIBIT B

Being all of that tract designated "LOT 1, 19.99 ACRES" on map entitled "SUBDIVISION PLAT OF THE DUNN PROPERTY", said map having been prepared by Rice & Associates, dated November 11, 1998, and now on file in the Office of the Register of Deeds of Wake County in Book of Maps 1999 at page 15, to which map reference is hereby made for a more particular description of same.

Laura M Riddick
Register of Deeds
Wake County, NC

Book : 008505 Page : 01995 - 02024

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

North Carolina - Wake County

The foregoing certificate___ of _____
_____
Gregory A. Ferguson.
_____
_____

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

Laura M. Riddick, Register of Deeds

By: _____
~~Assistant~~/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
30 # of Pages