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LAURA M RIDDICK
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Prepared by and Return after recording to: Hope Derby Carmichael, Jordan Price Wall Gray Jones & Carlton, PLLC
P. O. Box 10669, Raleigh, N.C. 27605

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR YARBOROUGH PARK TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION FOR YARBOROUGH PARK TOWNHOMES (the "Declaration") is made on the date hereinafter set forth by ST. MARY'S ASSOCIATES, LLC, a North Carolina limited liability company doing business in Wake County, North Carolina (hereinafter, "the Declarant");

W I T N E S S E T H

WHEREAS, Declarant is the owner of certain real property, (hereinafter the "Property") located in the City of Raleigh, County of Wake, State of North Carolina, more particularly described on the attached "Exhibit A" incorporated by reference as if fully set forth herein; and

WHEREAS, Declarant intends to develop on the Property a residential townhome community to be known as Yarborough Park; and

WHEREAS, Declarant proposes to subject the Property to this Declaration and the jurisdiction of the homeowners association, hereinafter described and hereinafter referred to as the "Association";

NOW, THEREFORE, Declarant hereby declares that all of the Property, including the Lots and Common Areas, are and shall be held, transferred, sold, conveyed, leased, mortgaged, occupied, used and otherwise disposed of subject to the following easements, restrictions, covenants, conditions, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and Yarborough Park. These easements, restrictions, covenants, conditions, charges and liens shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I
RALEIGH CITY CODE REQUIREMENTS

PART A
DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital

letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) "Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) "Annexation Declaration" is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) "Annexed Property" is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(e) "Board" is defined as the board of directors of the Association, and is the Executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

(f) "City" or "City of Raleigh" is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) "Code" is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is

described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

(1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

(2) Stormwater Control Measures;

(3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;

(4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;

(5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;

(6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

(7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

(1) All sums lawfully assessed by the Association against its Members;

(2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;

(3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;

(4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;

(5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;

(6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;

(7) Fees or charges for utilities used in connection with the Common Area;

(8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;

(9) Allocations to reserve funds;

(10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;

(11) Fees for services engaged by the Association;

(12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;

(13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and

(15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as **St. Mary's Associates, LLC, a North Carolina limited liability company**, its successors and assigns.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on _____ (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

(l) "Declarant Control Period" is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 8 of Part A of this Article.

(t) "Member" is defined as each Person who or which holds membership in the Association.

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the

conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is **4.28** acres.

(aa) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(ab) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(ac) "Stormwater Control Measures" or "Stormwater Control Facilities", such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

(ad) "Stormwater Operations Maintenance Manual and Budget" is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

Section 2. Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 3. Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

Section 4. Amendment of Declaration. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

Section 5. Assessments.

(a) Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

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

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year **2007**, the annual assessment per Lot is One Thousand Four Hundred Forty Dollars (**$1,440.00**). The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If

any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

(e) Classes of Membership. This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the

Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

Section 6. Membership and Governance.

(a) Membership. The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a

majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

Section 8. Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

Section 9. Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars ($1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

Section 10. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from it's liabilities as an Owner under this Declaration and other Governing Documents.

Section 11. On-Street Parking. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

Section 12. Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as

a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

Section 13. Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

(a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
(b) any development of the Annexed Property is first approved by the City;

(c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and

(d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in

the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

Section 14. Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. The presence of any fence, wall, storage shed, or similar structure or any other kind of obstruction in the easement area shall not obstruct access to the residence or business.

Section 15. Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

Section 16. Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

Section 17. Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

Section 18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement

removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

PART B
STORMWATER
(CODE SECTIONS 10-5007 and 10-9027)

Section 1. Stormwater Control Measures. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be maintained as follows:

The Declarant, for itself and all successors in the title, covenants that Lots 2, 3, 4, 5, 6, 7, 8, 9, 10,11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 & 39 each shall have a maximum impervious surface, as defined in Part 10 Chapter 9 of the Raleigh City Code, of the following square feet:

Lot	1	3235	Square feet
Lot	2	945	Square feet
Lot	3	941	Square feet
Lot	4	941	Square feet
Lot	5	945	Square feet
Lot	6	941	Square feet
Lot	7	945	Square feet
Lot	8	941	Square feet
Lot	9	822	Square feet
Lot	10	822	Square feet
Lot	11	945	Square feet
Lot	12	941	Square feet
Lot	13	822	Square feet
Lot	14	945	Square feet
Lot	15	911	Square feet
Lot	16	822	Square feet
Lot	17	822	Square feet
Lot	18	940	Square feet
Lot	19	892	Square feet
Lot	20	774	Square feet
Lot	21	774	Square feet
Lot	22	941	Square feet
Lot	23	892	Square feet
Lot	24	774	Square feet

Lot	25	775	Square feet
Lot	26	896	Square feet
Lot	27	945	Square feet
Lot	28	822	Square feet
Lot	29	822	Square feet
Lot	30	966	Square feet
Lot	31	966	Square feet
Lot	32	937	Square feet
Lot	33	822	Square feet
Lot	34	941	Square feet
Lot	35	940	Square feet
Lot	36	822	Square feet
Lot	37	936	Square feet
Lot	38	966	Square feet
Lot	39	1706	Square feet

And further, that impervious areas for common area: drives, parking, open space and sidewalks shall not exceed 51,166 square feet.

No installation of impervious surface shall be made without first obtaining a permit from the Stormwater Division of the Public Works Department of the City. No amendment or termination of this restrictive covenant shall be made without the prior written consent of the Raleigh City Attorney.

Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

Section 2. Annexation of Additional Property. As set forth in this Declaration, additional real property from time to time may be annexed to the Properties and subjected to this Declaration. Such Annexed Property shall also be subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following:

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. Except in those instances where the Stormwater Agreement already contains contribution payments for the Annexed Property, the Annexation Declaration shall establish an new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater Assessment shall be sufficient to Maintain the new or additional Stormwater Control Measures in or serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the new or amended Stormwater Agreement, and such Stormwater Assessment shall be assessed against the Owners of the Lots of the Annexed Property and Owners of the existing or future Lots served by the same Stormwater Control Measures.

Section 3. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

(a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off or the Properties, and

(b) a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

Section 4. Joint and Several Liability. Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

Section 5. Relocation of Drainage Easements. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void *ab initio*.

Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

PART C
CLUSTER UNIT DEVELOPMENT
(CODE SECTIONS 10-2101, 10-3071 and 10-3073)

[This part is inapplicable to this project.]

PART D
TOWNHOUSE DEVELOPMENT
(CODE SECTIONS 10-2109, 10-3072 AND 10-3073)

Any portion of the Properties that is part of a "townhouse development", as that term is defined in the Code, is subject to all of the following. A townhouse development may be, but is not required to be, part of a cluster unit development. Any townhouse development that is part of a cluster unit development is also subject to the provisions of the Code applicable to cluster unit developments (some of which may be identical to the following provisions), except as otherwise provided in the Code:

Section 1. Open Space. In addition to other provisions of this Article (*see* e.g., Part A, Sections 6, 16 and 17 which shall control in the event of a conflict), all Open Space is subject to the following:

(a) Townhouse Open Space. Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Area or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

(b) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public Ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(c) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

(1) written notice of the exchange is given to each Member of the Association;

(2) after the notice is given, those members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;

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

(4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(5) the exchange is approved by the Planning Director of the City.

(d) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and if accepted, deeded to the City.

(e) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(f) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

Section 2. Common Party Walls. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall,

within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

PART E
PLANNED DEVELOPMENT CONDITIONAL USE OVERLAY DISTRICT
(CODE SECTION 10-2057)

[This part is inapplicable to this project.]

PART F
CITY GREENWAYS
(CODE SECTIONS 10-3003 AND 10-3022)

[This part is inapplicable to this project.]

PART G
PRIVATE STREETS
(CODE SECTION 10-3074)

Section 1. Private Streets. Pursuant to Code Section 10-3074 (b) and (c), all of the following are applicable to private streets in the Properties:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration; provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

PART H
GATED COMMUNITY
[CODE SECTION 10-3074(d)]

[This part is inapplicable to this project.]

ARTICLE II
ADDITIONAL DEFINITIONS

Unless the context shall prohibit or otherwise require, each of the following words or terms, whenever used herein with an initial capital letter, shall have the following meanings in this Declaration, the Articles, and Bylaws:

1. "Amenities" shall mean any facilities constructed, erected or installed on the Common Area for the use, benefit and enjoyment of Members.

2. "Architectural Control Committee" shall mean the Architectural Control Committee appointed by the Board of Directors, pursuant to the Bylaws, or, in the absence of such Committee, the Board of Directors.

3. "Articles" shall mean the Articles of Incorporation for the Association, including any amendments thereto, filed with the Office of the North Carolina Secretary of State.

4. "Assessment" and "Special Assessment" shall mean an Owner's share of the Common Expenses assessed from time to time, against the Owner and his Lot by the Association in the manner herein provided.

5. "Building" shall mean and refer to a multi-unit structure containing Townhomes, or any detached, free standing townhome, constructed or erected on the Property.

6. "Institutional Lender" shall mean any bank, community financial institution, credit union, insurance company, Person, and other reputable mortgage lender and insurers of first mortgages.

7. "Plat" shall mean that subdivision plat, entitled "Yarborough Park Townhomes" recorded in Book of Maps 2007, Page ____, Wake County Registry.

ARTICLE III
VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership (which shall be non-cumulative) as follows:

Class A. Class A Members shall be all those Owners as defined in Article I of this Declaration with the exception of the Declarant; the Declarant shall be a Class A Member following cessation of Class B membership. The Class A Member shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article I of this Declaration. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Fractional voting shall not be allowed.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article I of this

Declaration, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the properties without the consent of Class A Members on account of development of such additional lands by the Declarant, or

(b) The date which is seven (7) years following the date of the recording of this Declaration.

Section 2. The right of any Member to vote may be suspended by the Board for just cause pursuant to its Bylaws and according to the provisions of Article I and Article IV of this Declaration.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Pursuant to Article I of this Declaration, every Owner shall have a perpetual right and easement of use and enjoyment in and to the Common Area and a right and easement of ingress and egress over and through the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association to limit the number of guests;

(b) Subject to the ordinances of the City, the right of the Association to charge reasonable admission and other fees for the use of any of the Amenities;

(c) The right of the Association to suspend the voting rights and the right to use the Amenities by an Owner and his family, tenants and guests for any period during which an Assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations subject to written notice and an opportunity for the Owner to be heard and to present evidence to the Board or an adjudicatory panel appointed by the Board, as set forth in G.S. 47F-3-107.1; however, such a suspension shall not restrict any Owner's (and his family's, tenants' and guests') right to use private streets, parking spaces, drainage rights and/or use of sidewalks as allotted in this Declaration;

(d) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said Property and the rights of such mortgagee in said Property shall be subordinate to the rights of the Owners hereunder; provided, however, that no encumbrance upon the Common Area shall be effective unless an instrument signed by Members entitled to cast at least eighty percent (80%) of the votes of each class of Membership has been recorded agreeing to such encumbrance;

(e) The Association shall be empowered and have the right to exchange Common Area to others on the condition that the terms of Article I, Part D, Section 1(c) are satisfied first. In addition, the Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency authority or utility for such purpose and subject to such conditions as may be agreed to by the Members. No conveyance from the Association shall be effective unless: (i) an instrument signed by Members entitled to cast at least 80% of the votes of each class of membership has been recorded agreeing to such dedication or transfer; and at least (ii) written notice of the proposed action has been sent to every Member not less than 30 days nor more than 60 days in advance; provided further that no Common Property and, in particular, none of the

property comprising the Stormwater Control Measures shall be conveyed so long as mandated by the Raleigh City Code.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to his family, tenants, guests or invitees who reside on such Owner's Lot.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area located in Yarborough Park to the Association. Accordingly, Declarant hereby covenants for itself, its successors and assigns, that prior to the conveyance of any Lot, the Common Area which adjoins or serves said Lot shall be conveyed in fee simple to the Association, free and clear of all encumbrances and liens, except utility and drainage easements to government authorities.

Section 4. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking space (excess spaces shall be used for overflow parking only), which may or may not be assigned by the Association's Board of Directors, together with the right of access, ingress and egress in and upon said parking areas. The Association shall regulate, and may prohibit, the parking of boats, campers, trailers, tractors, motor homes, commercial vehicles and the like on the Common Area, and when allowed, said vehicles shall be parked only in Common Area spaces designated by the Association. Furthermore, the repair or extraordinary maintenance of automobiles or other vehicles on Common Area is prohibited. Notwithstanding the above, any restrictions on the ability to park on public streets within the community shall be limited to Lot owners, family members, and their tenants.

Section 5. TV Antennas, Cablevision, and Piped-In Music. The Association may, in its discretion, provide one or more central television antennas for the convenience of the Members and may supply or arrange for piped-in music and/or cablevision and the cost of these may be included in annual or Special Assessments.

Section 6. Building Setback. The building setback will be a minimum of 30 feet from the adjacent property at 1419 Courtland Drive, PIN # 1714061474, Deed Book. 03686, Page 0353 of the Wake County Registry, as appears and as otherwise shown on any recorded plat. With specific reference to Lots 4 and 5 and Lots 6 and 7, the City of Raleigh has approved setbacks as follows: Lot 4 will have a side yard setback from building wall to property line of five (5) feet. Lot 5 will have a said yard setback of ten (10) feet from building wall to lot line. Lots 4 and 5 will have an aggregate of fifteen (15) feet within the building walls of any structures on the lots. There will be a separation of twenty (20) feet between buildings on Lots 5 and 6. Lot 6 will have a side yard setback of ten (10) feet from building wall to lot line. Lot 7 will have a side yard setback of five (5) feet from building wall to lot line. Lots 6 and 7 will have an aggregate of fifteen (15) feet within the building walls of any structures on the lots. The Declarant shall install, and the Association shall maintain additional landscaping to include a minimum of two (2) evergreen trees (eastern red cedar or similar) and three (3) evergreen shrubs (wax myrtles or similar) between Lots 5 and 6 and between Lots 7 and 8.

Section 7. Landscaping Buffer. There shall be a ten (10) foot minimum width landscape buffer adjacent to the common property line of the Property with the property at 1419 Courtland Drive PIN # 1714061474 as shown in Deed Book, 03686, Page 0353 of the Wake County Registry.

Section 8. Publicly Accessible Space. A minimum of two thousand two hundred (2,200) square feet of publicly accessible open space shall be located adjacent to Courtland Drive, and Declarant shall install a 6-foot brick sidewalk surrounding said open space.

ARTICLE V
EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for private streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cablevision and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

The Declarant reserves the right to subject the Property to a contract with Progress Energy Corporation 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 Progress Energy Corporation by the Owner of each Lot.

Section 2. Easements Appurtenant to Lots. All private streets shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed thirty-six (36) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 4. Structural Support. Every portion of a Townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 5. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome and that endangers any Building or portion of the Common Area, or any adjoining Lot.

Section 6. Temporary Construction Easement. Subject to such reasonable rules and regulations as may be established by the Association for the protection of the Common Area, a temporary easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and each Owner to be used for the conduct of construction activities on a Lot or the Common Area, including the storage of construction materials. This easement shall be used only as and when necessary to facilitate the construction by Declarant or an Owner, of improvements on a Lot or the Common Area. In using and taking the benefits of this easement, Declarant or its agent, and Owners shall use their best efforts to minimize any land, improvements, or

vegetation disturbance activities within the Common Area, and shall restore such land, improvements, and vegetation therein to as near the same condition as prevailed prior to such disturbance as is reasonably practicable. Should Declarant or its agent or an Owner fail to restore the disturbed Common Area as required herein, the Association may restore the land and vegetation to the required condition and Declarant, its agent or the responsible Owner, whichever is applicable, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. Where any Owner seeks to take advantage of the easement herein conveyed, such Owner's rights to use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

Section 7. Stormwater Control. The Declarant and Association do hereby grant an easement across, in, under, over and through the Common Area for the purposes of access and maintenance of the Stormwater Control Measures.

Section 8. Conditional Easement. In the event that the property located adjacent to Yarborough Park, at 1601 Wake Forest Road, PIN # 1714067476, Deed Book 03363, Page 0440, Wake County Registry, is redeveloped for residential purposes, all common areas and private streets will be subject to a pedestrian and vehicular access easement for the encroachment by the residents of said property.

ARTICLE VI
COVENANT FOR ADDITIONAL ASSESSMENTS

Section 1. Special Assessments for Extraordinary Expenses. In addition to the Assessments authorized above, the Association may levy in any Assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or any other extraordinary expense of the Association, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting, although the amount of the proposed Assessment need not be stated. The presence at this meeting of Members entitled to cast, or proxies entitled to cast, thirty percent (30%) of the votes of each class of Members shall constitute a quorum present or represented. In the event a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of the Members of each class of membership present at the meeting in person or by proxy. The quorum requirement for the next duly called meeting shall be one-half of the quorum requirements of the previously-called meeting. The notice requirements as set forth in this Section shall remain in effect for all subsequently-called meetings.

Section 2. Special Assessments for the Purchase and/or Reconstruction of Townhomes. In the event that any Townhome located on the Property is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association, within sixty (60) days following destruction, of whether he intends to repair or reconstruct the Townhome; and if the Owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equal at least fifty percent (50%) of the appraised value of the improvements on the Lot before they were damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such Townhome in the manner hereinafter provided. The purchase option shall be effective for a period of one hundred twenty (120) days following notice of the Owner's election not to repair or reconstruct.

(a) Exercise of Option. The Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, real estate agents, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing, to the Board within fifteen (15) days of appointment of the committee. The report shall set forth such matters as the Board and committee deem pertinent and shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event only the Lot shall be restored by the Association to its natural state, with the Association maintaining the Lot as an undeveloped portion of the Property in a neat and attractive condition; provided however, the Stormwater Control Measures located on such Lot shall be maintained and repaired by the Association so long as mandated by the Raleigh City Code.

If the Board determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within fourteen (14) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of each class of membership present, in person or by proxy, and voting, the Board will be authorized to purchase and reconstruct the Townhome and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the Townhome. The Board of Directors may require that the Assessment be paid in a lump sum, in installments during an Assessment year, or over a period of two (2) or more Assessment years, as the Board, in its discretion, shall determine to be appropriate. Such an Assessment shall be in addition to, and not in lieu of, any other annual or Special Assessment provided for in this Declaration and levied by the Association.

(b) Determination of Value. The Owner of the Townhome shall convey marketable title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board of Directors and the Owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

(c) Application of Insurance Proceeds. The Owner of the Townhome, prior to conveyance to the Association, shall apply, or cause to be applied, so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances, and obligations upon the Lot. The purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family Townhome unit. The

reconstructed or repaired Townhome unit shall be constructed in substantial conformity with the remaining Townhomes.

(e) Retention by Owner. If a Townhome is not habitable by reason of damage, and the Owner gives notice of his election to repair or reconstruct the Townhome, the obligation of the Owner to pay annual Assessment installments shall not be suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within ninety (90) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be removed in a neat, clean, and safe manner and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the Owner, unless the Lot is thereafter acquired by the Association.

(f) Reconstruction by the Association. Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; provided, however, that only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase and/or reconstruction of the Townhome, and no other portion of the Property, including the Common Area and facilities, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase and/or reconstruction, and no Member shall be required to become personally obligated therefore.

The Association shall hold title to the Lot and improvements for the benefit of all Members. The Board of Directors may lease or sell the Lot and improvements thereon upon such terms and conditions as it, in its sole discretion, deems most advantageous to the Members. The rental income shall be applied in the following order of priority: (i) to the payment of all rental costs and fees, if any, and all taxes, Assessments, liens, encumbrances and obligations on or secured by the Lot; (ii) to the maintenance, upkeep, and repair of the Townhome; (iii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and (iv) to the Association's general operating fund for Common Expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (i) to the payment of all costs and fees from the sale, and all taxes, Assessments, liens, encumbrances, and obligations on or secured by the Lot; (ii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and (iii) to the Association's general operating fund for Common Expenses of the Association. Any payment or repayment to Members of the Special Assessment may be in cash or may be applied to the annual Assessment due or to become as determined in the discretion of the Board.

(g) Application of Declaration and Bylaws. Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome that has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall continue to be subject to the provisions of this Declaration and to the Bylaws of the Association.

Section 3. Uniform Rate of Assessment. Annual and Special Assessments must be fixed at a uniform rate for all Lots on a per Lot basis, with the exception of Lots owned by the Declarant as provided hereinabove, and may be collected monthly. Notwithstanding anything to the contrary stated herein, the Declarant shall pay assessments on Lots owned by Declarant at the rate of 25% of the rate otherwise applicable to all Lots in use.

Section 4. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence for all Lots on the first day of the next month following the day on which the certificate of occupancy has been issued for the Lot by the City, which coincides with the Lot becoming a

Lot in Use. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least 30 days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand at any time, furnish a certification in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

Section 5. Fines. The Board may impose fines against any Lot for violation of this Declaration, the Articles or Bylaws. Fines shall be paid not later than thirty (30) days after notice of the levying of the fine. Fines shall be levied by the Association only after following the statutory procedure set forth in G.S. § 47F-3-107.1. These fines shall not be construed to be exclusive remedies to which the Association may otherwise be legally entitled; however, any fine paid by an Owner shall be deducted from or offset against any damages that the Association may be otherwise entitled to recover from said Owner. For purposes of collection and in the sole discretion of the Board, fines may be treated as Assessments. The fines the Board of Directors may impose shall be as follows:

(a) first non-compliance or violation: a fine not to exceed Fifty Dollars ($50.00);

(b) second non-compliance or violation: a fine not to exceed One Hundred Dollars ($100.00); and

(c) third and subsequent non-compliance or violation or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars ($100.00) for each week of continued violation or non-compliance.

Section 6. Exempt Property. The following properties subject to this Declaration shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by a local public authority and (b) the Common Area. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 7. Two Months Assessments to be Collected at Closing. At the closing of the sale of each Townhome (both the initial sale by the Declarant and all subsequent sales), a sum shall be collected from the purchaser equal to one-sixth (1/6) of the current annual Assessment (i.e., two (2) monthly assessment installments) for such Townhome Lot, and such sum shall be paid into the general operating fund of the Association for purpose of insuring that the Association will have sufficient funds to meet unforeseen expenditures, and to acquire additional equipment or services deemed necessary or desirable. Such sum is a one-time additional Assessment and shall not be considered as an advance payment of regular annual Assessments.

ARTICLE VII
ARCHITECTURAL AND APPEARANCE CONTROL AND INSPECTION

Upon termination of the Class B membership, the Board of Directors shall appoint an Architectural Control Committee consisting of at least three (3) Owners.

No site preparation or construction, erection or installation of any exterior improvements, including but not limited to, a Townhome, outbuilding, sign, fence, screen (whether by vegetation or structures) outside lighting, walk, storm door, mail box, solar panel, window treatment, decorative lawn ornaments, number, name, sign or other structure or planting, except unit numbering identification signs required by the Code, shall be constructed, erected, installed or planted upon any Lot or the exterior of the Townhome or any structure thereon until the completed plans and specifications showing the nature, kind, shape, height, materials, floor plans, color

scheme and location with respect to topography and finished ground elevation, and other specifics thereof, shall have been submitted to, and approved in writing, by a majority of the Architectural Control Committee.

The Architectural Control Committee may refuse to approve any such exterior alterations or additions to a Lot unless such alterations or additions are in harmony with existing structures and improvements within Yarborough Park, as to style, shape, color and size. Moreover, the Architectural Control Committee shall not approve any plantings or the construction of fences, walls, screens, and other such structures if, in the opinion of a majority of the Architectural Control Committee, such construction or planting constitutes an unreasonable obstruction of the view of another Owner or interferes with the exterior maintenance of the Townhome and/or any adjoining Townhome. In no event shall the Architectural Control Committee be required to approve a proposed alteration or addition even though it meets the criteria set forth herein.

In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final, accurate and complete form within thirty (30) days after its receipt thereof, such completed plans and specifications shall be deemed approved.

There is specifically reserved unto the Architectural Control Committee the right of entry and inspection upon any Lot for the purpose of determining whether the work being undertaken conforms with the approved plans and specifications, is in a good and workmanlike manner, and is of good quality materials.

The Association is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be allowed to recover all court costs, expenses and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

ARTICLE VIII
EXTERIOR MAINTENANCE

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot and Townhome which is subject to Assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior window and door sills, frames and hardware, chimneys, any other exterior Building surfaces, trees, plantings, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, underground waterproofing, rear patios and steps or HVAC condensers or other mechanical systems, including, but not limited to, water and sewer lines which serve only one unit. 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 Owner of any Lot may, at his election and at his own expense, plant and maintain trees, shrubs, flowers and grass in the enclosed portion of his rear yard, provided that such plantings and maintenance by the Owner do not hinder the Association in performing its maintenance of the exterior of the Townhome, the remaining yard spaces or the Common Area. No such plantings and maintenance by a Lot Owner shall reduce the Assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's planting and

maintenance rights for a period not to exceed one year subject to written notice and an opportunity for the Owner to be heard and to present evidence to the Board or an adjudicatory panel appointed by the Board as set forth in G.S. 47F-3-107.1. The Owner of a Lot shall not plant any vegetation in the front yard except with the prior written approval of the Association.

In the event that the need for maintenance or repair or replacement is caused through the willful or negligent act of the Owner, his family, guests, invitees, tenants, contract purchasers or contractors; or is caused by defects in the original construction on the Lot, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, or for the purpose of correcting, repairing or alleviating any emergency condition provided for in Article V, Section 5 hereof (but only if such would normally be an expense of the Lot Owner), then in any such event the Association shall have the option to repair the property after seven (7) days written notice to the Owner. Funds to pay for the full cost of such maintenance or repairs or replacement shall be levied by Special Assessment which must be considered at a special meeting of the Members called for that purpose, upon not less than seven (7) nor more than fifteen (15) days written notice to Members. This Special Assessment must be approved by the affirmative vote of at least sixty six and two-thirds percent (66 and 2/3%) of each class of membership present, in person or by proxy, and voting. However, the full amount of the Special Assessment shall be the Owner's sole responsibility; if the Owner does not repay to the Association the full amount of this Special Assessment, it shall become a lien and continuing charge on the Owner's Townhome in accordance with Article VI of this Declaration.

ARTICLE IX
LOT USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors and the Architectural Control Committee shall, from time to time, formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area. Such rules and regulations, along with all policy resolutions and actions taken by the Board of Directors shall be recorded in the Book of Rules, Regulations, and Resolutions which shall be maintained in a place convenient to the Owners and available to them to inspect during normal business hours.

Section 2. Use. Each Building, Lot, Townhome and all Common Area shall be used subject to the following restrictions and to those set forth in the Bylaws, if any:

(a) All Buildings, each Townhome and the Common Area shall be used exclusively for single-family residential purposes, except for a temporary office of the Declarant, subject to Code requirements, and/or a sales model used by Declarant, or an Owner's home occupation as defined by the City's Code. For purposes of this Article, "single family" shall mean and refer to a group related by blood, marriage or adoption living together, or a group of not more than three (3) unrelated persons living together.

(b) No Owner shall locate upon a Lot an outside clothes line.

(c) No satellite dish, television antenna or other communications equipment may be located on any Lot other than one (1) satellite dish equal to or less than one (1) meter in diameter and such dish must be located in the rear of the Townhome and appropriately screened so as not to be visible from the street or a neighboring Lot. No satellite dish or antenna shall be affixed to the roof or exterior siding of any of the Townhome buildings.

(d) Subject to the City's Code, a real estate "For Sale" or "For Rent" sign no larger than two (2) square feet may be placed on a Lot within public view without the Architectural Control Committee's approval. Declarant may erect and maintain temporary signs for its temporary offices and for the marketing of the Lots

and Townhomes in Yarborough Park. In addition, signs may be posted for safety and traffic control and Townhome address or identification numbers. The provisions of this subsection shall not be applicable to Institutional Lenders of any first mortgage which come into possession of any Townhome by reason of any remedies provided for in the mortgage, foreclosure of any mortgage or any deed of trust or other proceeding in lieu of foreclosure. Nothing herein shall restrict the display of the flag of the United States or North Carolina or any political sign, as provided in G.S. 47F-3-121. During the period of time in which the Declarant maintains controls over the Association, the Declarant shall have any and all control over permissive uses of signs.

(e) No construction materials, equipment, machinery or any other thing used for construction purposes shall be stored on a Lot, except as may relate to construction on the Lot, and in no event may such materials remain on the Lot for longer than the length of time reasonably necessary to complete such construction.

(e) Nothing shall be kept, and no activity shall be carried on, within a Townhome or on a Lot or the Common Area, which will increase the rate of insurance for the Common Area or result in the cancellation of any such insurance, or which will be in violation of any law, ordinance, or regulation of any governmental unit, the Association or the Architectural Control Committee.

(f) All garbage receptacles, dumpsters, and other such containers shall be properly screened from public view except as may be otherwise required by law. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter or trash of any kind shall be permitted on any Lot, within any Townhome or upon the Common Area.

(g) No structure on the Lot, other than the Townhome, shall be used for human habitation, either temporarily or permanently.

(h) No inoperative vehicle, boat, trailer, camper or other recreational vehicle shall be regularly parked on a Lot or on Common Areas except within a garage which is part of such Lot.

(i) Nothing shall be done in or to any Lot or Townhouse or the Common Area which will impair the structural integrity of any Building, Townhome or portion of the Common Area, or which would impair or alter the exterior of any Building or Townhome, except the exterior of a Townhome may be altered as provided for in this Declaration.

(j) The pursuit of hobbies or other activities which, in the sole discretion of the Board, tend to cause disorderly, unsafe, unsightly or unkempt conditions, shall not be permitted or undertaken on a Lot or in a Townhome.

(k) No waste of the Common Areas and facilities shall be permitted or committed.

(l) No Owner may lease his Townhome for less than a six (6) month term or for purposes of occupancy by other than a single family as defined in this section. No portion of any Townhome (other than the entire Townhome) may be leased and no transient tenants may be accommodated. Each lease shall be in writing on forms approved by the Association. Any Owner who leases his Townhome shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Association. Each such lease shall contain a provision to the effect that the rights of the tenant to use and occupy the Townhome shall be subject and subordinate in all respects to the provisions of this Declaration, to the Bylaws, and to such rules and regulations relating to the use of the Common Area as the Board may from time to time promulgate. Every lease shall contain a provision that failure of the tenant to comply with the terms of this Declaration and the Bylaws and the Association's rules and regulations shall constitute an incident of default under the lease. Failure to contain this language in the lease shall not waive the terms of this provision. The provisions of this subsection shall not

apply to any Institutional Lender that comes into possession of any Townhome as a result of a foreclosure sale or as a result of any proceeding in lieu of foreclosure, or to any Townhome owned by Declarant.

(m) No noxious, offensive or loud activities shall be carried on upon any Lot or within any Townhome. Each Owner shall refrain from any act or use of the Lot or Townhome which could reasonably cause embarrassment, discomfort, annoyance, or become a nuisance to the residents of Yarborough Park.

(n) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Townhome or in the Common Areas. However, domestic household pets may be kept in a Townhome provided all governmental laws as well as all rules and regulations adopted by the Association concerning such pets are observed.

Section 3. Governmental Regulations. All governmental laws, rules, regulations and ordinances applicable to a Lot shall be observed, at all times, by the Owner. In the event of any conflict between any provision of such governmental laws, rules, regulations or ordinances, and any provision of this Declaration, the more restrictive shall prevail.

ARTICLE X
RIGHTS OF INSTITUTIONAL LENDERS

So long as any Institutional Lender shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by an independent Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year;

(b) to be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings;

(c) to be given notice of default in the payment of Assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing to the Association;

(d) to inspect the books and records of the Association during normal business hours;

(e) to be given notice by the Association of any substantial damage to any part of the Common Area; and

(f) to be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires any of the benefits of the provisions of this section, such Institutional Lender shall serve written notice of same upon the Association by registered or certified mail addressed to the Association and sent to its address identifying the Lot upon which any such Institutional Lender holds any mortgage or mortgages, or identifying any Lot owned by it, together with sufficient pertinent facts to

identify any mortgage or mortgages which may beheld by it, and which notice shall designate the notice requested and where and to whose attention it is to be sent.

ARTICLE XI
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, and subject to the approval of the City, additional properties may be added and annexed to the Property only if two-thirds (2/3) of all the votes entitled to be cast in each Membership class are cast in favor of annexation, subject to the approval of the City Attorney. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly annexed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation, describing the lands annexed and incorporating the provisions of this Declaration. City approval shall be evidenced by the signature of the Raleigh City Attorney and his/her Deputy on the recorded original or copy of the Declaration of Annexation. Any Declaration of Annexation is void *ab initio* if recorded without the required City signature. No other action or consent shall be necessary.

For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirements set forth in Article VI of this Declaration and in the Articles and in the Bylaws, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event only, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation in writing, shall constitute the required two-thirds (2/3) majority of each class of all votes entitled to be cast , the annexation shall stand approved.

Section 2. Annexation by Declarant. If by the Declarant Annexation Date, Declarant develops additional land located either contiguous to or across a public or private street from the property described in Exhibit A attached hereto, Declarant may, subject to the approval of the City Attorney, annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. City approval shall be evidenced by the signature of the Raleigh City Attorney and his/her Deputy on the recorded original or copy of the Declaration of Annexation. Any Declaration of Annexation is void *ab initio* if recorded without the required City signature. No other action or consent shall be necessary.

Section 3. Conveyance of Common Area Properties. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot, Building or Townhome within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association, in accordance with Article IV, Section 3 of this Declaration, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is

platted, and conveying same in fee simple without any encumbrances except drainage, greenway, and utility easements.

Section 4. Common Area Reserved. Open space common areas and private streets shall be preserved for the perpetual benefit of the owners of the residential sites within the development, and it shall be restricted against private or public ownership for any other purpose. No Common Area shall be subdivided or conveyed except as provided in this Declaration.

ARTICLE XII
INSURANCE

Section 1. Common Area Policies. All insurance policies upon the Common Area shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear.

Section 2. Association Coverage. As specified in Article I of this Declaration, the Board shall procure and maintain public liability and property damage insurance insuring each Board member, the officers and the Association against any liability to the public or to Owners (and their invitees, tenants, agents and employees) arising out of or incident to the ownership and/or the use of the Common Areas, or such areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the right of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board, but in no event, shall be less than One Million Dollars ($1,000,000.00) per occurrence with regard to the Association and each individual director and officer. The Board of Directors shall also obtain such other insurance coverage as it determines, from time to time, to be desirable and reasonable including, without limitation, fire and other hazards insurance, with extended coverage endorsement, equal to the maximum insurable replacement value on the Common Area, any Townhome or other building owned by the Association. Premiums upon insurance policies obtained by the Board of Directors shall be a Common Expense.

In the event the Association becomes the Owner of any Buildings or other improvements, or personal property, located within the Common Areas or such other areas that the Association is responsible for, the Board shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board with the assistance of the insurance company providing such coverage, and in no event less than 80% of the replacement cost of the property insured, less excavation and foundations. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to Buildings and properties similar in construction, location and use.

There shall also be obtained such other insurance coverage as the Board shall determine from time to time to be desirable and necessary, including, but not limited to a directors and officers liability policy. Premiums upon insurance policies purchased by the Board shall be paid as a common expense of the Association.

Section 3. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of, or administered by, the Association. Where the Association has delegated some or all of its responsibility for the handling of funds to a management agent, fidelity bonds shall be required for such management agent's officers, employees and agents handling or otherwise responsible for funds belonging to or administered on behalf of the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three (3) months' aggregate Assessments on all Lots plus reserve funds. Fidelity Bonds required herein shall:

(a) name the Association as an obligee;

(b) contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(c) provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any Institutional Lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.

Section 4. Proceeds. The proceeds of all contracts of insurance purchased by the Association shall be payable to the Board of Directors as insurance trustee under this Declaration.

Section 5. Owners' Coverage. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board of Directors, and the cost of such insurance shall be included in the annual Assessment against the Owner's Lot and shall constitute a lien against his Lot until paid. The maximum annual Assessment set forth in Article VI, Section 3 shall not bar the Association from including the cost of said insurance in the annual Assessment.

[Recommendation to Owners -If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent attached unit, there may be prolonged disputes between the insurance carriers of the adjacent damaged units (which may, in turn, delay the settlement of the claims) unless the insurance protection on both units is provided by the same carrier. It is therefore recommended that the Owners of all Townhomes located within the same Building purchase their fire and casualty insurance from the same insurance carrier.]

ARTICLE XIII
MERGER OR CONSOLIDATION

Upon a merger or consolidation of the Association with another organization, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowner's association or, alternatively, the properties, rights, and obligations of another homeowner's association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger, provided however, no such merger shall be effective until it is approved in writing by the Raleigh City Attorney or his/her Deputy. The surviving or consolidated homeowner's association may administer the covenants and restrictions established by this Declaration, together with the covenants and

restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocations, changes or additions to the covenants and restrictions, as the same may be established in this Declaration or any subsequent amendment hereto, except as may be herein provided.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any 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 any 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. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets within the Property. If it is necessary to erect "no parking" signs, streetlights or other necessary traffic aides or to tow vehicles abandoned or improperly parked in order to accomplish this goal, this shall be done at the expense of the Association as a Common Expense.

In no case shall the City, City employees, emergency personnel or other agency which provides emergency or regular fire, police, sanitation or other public service to the Property, be responsible for failing to provide any such service to the property or any of its occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, security gates or any other factor within the control of the Declarant, the Association, or occupants.

Furthermore, the City, City employees, emergency personnel or other agencies providing emergency services are expressly permitted to remove or otherwise damage any security gate that may be erected, if necessary to provide emergency service, and on no account shall they be held liable for such damage, even if the damage occurred on a "false alarm."

In no case shall the City or State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 3. FHA/VA/FNMA Approval. Notwithstanding any provision of this instrument to the contrary, as long as there is a Class B membership and if Declarant desires to qualify sections of this development for Federal Housing Administration, Veterans Administration or Federal National Mortgage Association approval (but not otherwise) the following actions will require the prior approval of Federal Housing Administration, Veterans Administration or the Federal National Mortgage Association, to wit: dedication of Common Areas, amendment of this Declaration, mergers and consolidations, mortgaging of Common Area, annexation of additional lands and dissolution.

Section 4. 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 5. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and by the Owner of any Lot subject to this Declaration, his respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall automatically renew for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first 20 year period by the affirmative vote of the Owners of not less than ninety percent (90%) of the Lots, and thereafter by the affirmative vote of the Owners of not less than seventy-five

percent (75%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of the Owners, to correct any obvious error or inconsistency in drafting, typing, or reproduction. Amendments shall not become effective until approved by the Raleigh City Attorney or his/her Deputy if the amendment modifies or affects any provisions of this Declaration that are required by the City Code. Evidence of such approval shall be indicated by the signature of the Raleigh City Attorney or his/her Deputy on the recorded amendment. Any amendment of the Declaration without the required signature is void *ab initio*.

No amendment to this Declaration or to any document relating to stormwater, including without limitation, Stormwater Control Measures, funding of the Stormwater Agreement, and provisions relating to the City assessment lien, shall be effective without the prior written approval of the Raleigh City Attorney or his/her Deputy. Evidence of such approval shall follow the procedure as described in the previous paragraph.

If any amendments to this Declaration are enacted by such affirmative vote, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall, within 30 days, attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the name and manner that deeds are executed, and shall cause the amendment to be registered in the Office of the Register of Deeds for Wake County. All amendments shall be effective from the date of recordation in the Wake County Registry. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF YARBOROUGH PARK TOWNHOMES

By authority of its Board of Directors, Yarborough Park Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by its Members and the Raleigh City Attorney, or his/her Deputy, and is, therefore, a valid amendment to the existing covenants, conditions, and restrictions of Yarborough Park.

This the _____day of _____, _____.

YARBOROUGH PARK
HOMEOWNERS ASSOCIATION, INC.

_____
By: _____
Its: President

(Corporate Seal)

ATTEST: _____
Secretary

Section 6. Prohibition Against Association Entering into Long Term Contracts while Declarant in Control of Board of Directors. Until such time as the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, or December 31, 2010, whichever occurs first, the Association is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a

right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time, upon not less than ninety (90) days notice from the Association to the other party.

Section 7. Gender. As used herein, the masculine shall include the feminine and neuter genders as appropriate.

Section 8. Headings. Headings used herein are for convenience only and are in no way intended to define or limit the content hereof.

Section 9. Density. The Yarborough Place Property is currently zoned R-10. The Yarborough Park Property at the time of recordation of this Declaration consists of approximately 4.14 acres. Based on the existing zoning of the area, the maximum allowable dwelling units for the Yarborough Park Property, without rezoning, is approximately 39 dwelling units.

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IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions for Yarborough Place Townhomes this the 6th day of August, 2007.

ST. MARY'S ASSOCIATES, LLC,
a North Carolina limited liability company

A. Settle Dockery
By: A. Settle Dockery, Member Manager

NORTH CAROLINA
COUNTY OF WAKE

GRANTOR ACKNOWLEDGEMENT

I, Sue Harrell Woodlief, a Notary Public of the County and State aforesaid, certify that A. Settle Dockery, of whom I have personal knowledge, came before me this day and acknowledged that he is a Manager of St. Mary's Associates, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, voluntarily executed the foregoing instrument on behalf of said company in his capacity as Manager of said limited liability company.

WITNESS my hand and official seal, this the 6 day of August, 2007.

(SEAL-STAMP)

SUE HARRELL WOODLIEF NOTARY * * * PUBLIC WAKE COUNTY N.C.

Sue Harrell Woodlief
Notary Public
Name: Sue Harrell Woodlief
My Commission expires: 09-08-08

EXHIBIT A

PROPERTY OF ST. MARY'S ASSOCIATES, LLC
Raleigh, North Carolina

BEING all that certain property shown on map entitled St. Mary's Associates, LLC, and prepared by John A. Edwards & Company, Consulting Engineers, dated July 5, 2007 and being duly recorded in the Office of the Register of Deeds of Wake County in Book of Maps 2007, Pages 1738 and 1739.

CERTIFICATION BY ATTORNEY

The undersigned attorney certifies that these covenants are in accordance with Raleigh City Code requirements.

Certified this 7 day of August, 2007.

By: _____
Hope Derby Carmichael, Attorney at Law
NC State Bar No. 18146
PO Box 10669
Raleigh, NC 27605
Telephone: 919-828-2501

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Catherine O. Quezada, a Notary Public in and for the aforesaid County and State, hereby certify that Hope Derby Carmichael, of whom I have personal knowledge, appeared before me this date and in my presence, voluntarily acknowledged the due execution of the foregoing document by her as Attorney for Declarant, St. Mary's Associates, LLC, and as the preparer of the foregoing Declaration of Covenants, Conditions and Restrictions for Yarborough Park Townhomes.

This 7th day of August, 2007.

_____
Notary Public

Catherine O. Quezada
Name

CATHERINE O. QUEZADA
NOTARY PUBLIC
WAKE COUNTY, N.C.

My commission expires:

04.30.08



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

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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages

22.004-1/20/06