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MASTER DECLARATION OF

COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

HIGHLAND CREEK

After Recording: Mail To

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Exhibit A Legal Description of the Project Land

Exhibit B Legal Description of Approved Additional Land shown on Master Plan

Exhibit C Development Plan for the Project

MASTER DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR

~~MASTER DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS~~

FOR

HIGHLAND CREEK

THIS MASTER DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HIGHLAND CREEK ("Declaration") is made this 22nd day of January, 2007, by **CENTEX HOMES**, a Nevada general partnership ("Declarant").

OVERVIEW

Declarant is the owner of the real property described on **Exhibit A** (the "Project Land"). Declarant plans to develop a residential community on the Project Land (the "Project") in multiple stages. Declarant desires to establish these covenants, conditions, restrictions, and easements for the Project to provide for the efficient administration, operation and Maintenance of facilities, infrastructure, amenities and services which will benefit the Project.

Accordingly, Declarant has created a North Carolina non-profit corporation known as the Highland Creek Master Association, Inc., to exercise certain rights and obligations in this Declaration with respect to the Project Land. The owners of the residential dwellings in the Project shall be members of such Association.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Project Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Project Land and any part thereof and which shall be binding upon all parties having any right, title or interest in the Project Land or any part thereof.

ARTICLE 1
EXHIBITS

The following exhibits are attached to and made a part of this Declaration:

Exhibit A	Legal Description of the Project Land
Exhibit B	Legal Description of Approved Additional Land shown on Master Plan
Exhibit C	Master Plan of the Project

ARTICLE 2
DEFINITIONS

"Amendment(s)" mean(s) any and all amendments to this Declaration.

"Annexed Property" or "Additional Land" (the terms being used interchangeably) means the real property described on **Exhibit B** and any other real property that is contiguous to the Project Land, which may be subjected to the terms of this Declaration as provided in Article 12, and in Section 13 of Part A of Article 16, and subject to the provisions of Section 4 of Part C of Article 16.

"Approving Party" means the entity established and empowered either by Article 10 of this Declaration or by the provisions of a Sub Association, to review and approve all Improvements proposed to be installed or constructed upon or within the applicable Neighborhood or portion of the Project Land.

"Articles" mean the Articles of Incorporation of the Association.

"Assessment(s)" means a payment which a Residential Owner is obligated to pay to the Association as permitted or contemplated by the Association Documents.

"Association" means **Highland Creek Master Association, Inc.**, a North Carolina nonprofit corporation. See also Section 1(d) of Part A of Article 16.

"Association Documents" mean in the aggregate this Declaration, the Articles and Bylaws, and all of the instruments and documents defined in Section 1(o) of Part A of Article 16, as they may be amended from time to time.

"Association Property" or "Common Area" means the Recreation Facilities, the portions of the Project Drainage System owned by the Association, the Entrance Facilities, the Street Islands, play areas (see Section G of Article 4), pedestrian trails, and any other lands, systems, facilities, personal property, equipment, rights and easements which may be deeded, leased, granted, reserved, assigned or transferred to the Association, as described in this Declaration, together with all Improvements thereon and equipment, facilities and rights associated therewith. See also Section 1(h) of Part A of Article 16.

"Attached Unit" means a Living Unit that is attached to an adjacent Living Unit by a common wall located on the boundary between the abutting Lots.

"Board" means the Board of Directors of the Association, as also defined in Section 1(e) of Part A of Article 16.

"Bylaws" means the Bylaws of the Association.

"Committee" means the master architectural control committee established and empowered by Article 10 of this Declaration as the Approving Party with respect to all Detached Units that are not subject to a Sub Association Declaration.

"City" means the City of Raleigh, North Carolina, as defined in Section1(f) of Part A of Article 16.

"County" means Wake County, North Carolina.

"Declarant" means Centex Homes, a Nevada general partnership, and any successor or assign to which Centex Homes specifically assigns all or part of the rights of Declarant by an express written assignment recorded in the Registry.

"Declarant Control Period" means the period expiring on the Turnover Date.

"Declaration" or "Master Declaration" means this document, as it may be amended or supplemented from time to time.

"Detached Unit" means a Living Unit that is free-standing and not attached to any other Living Unit.

"Director" means a member of the Board.

"Entrance Facilities" means any Project or Neighborhood entrance monuments or features, together with all related landscaping, signage, irrigation, and other ancillary Improvements constructed as part of such entrance feature(s).

"Final Plat" means a final record plat approved by the City for a portion of the Project Land and recorded in the Registry (see also Section 1(aa) of Part A of Article 16.

"Governmental Entity" means the federal government, the State of North Carolina, the County of Wake, the City of Raleigh, and any other agency or authority defined by Section 1(p), Part A, Article 16.

"Improvement" means any structure or improvement which is constructed, made, installed, attached, placed or developed within or upon any portion of the Project Land, including but not limited to any building, fence, wall, patio area, garage, Stormwater Control Measure, driveway, walkway, antenna, satellite dish, sign, mailbox, pool, tennis court, deck, or any change, alteration, addition or removal of any such structure or improvement.

"Institutional Mortgagee" means any lending institution holding an interest in a Living Unit or Lot pursuant to a first mortgage covering a Living Unit or Lot. Institutional Mortgagees shall include, but not be limited to (i) the successors and assigns of such lending institutions, (ii) any "secondary mortgage market institution" who typically purchase, insure or guaranty mortgages (such as the Federal National Mortgage Association, the Veterans Administration ("VA"), the Federal Housing Administration ("FHA"), the Department of Housing and Urban Development ("HUD"), and similar entities), (iii) Declarant, if Declarant holds a mortgage on any portion of the Project Land.

"Interest" means the rate of twelve percent (12%) per annum, provided that Interest shall not be greater than the maximum interest rate allowed by law on the specific debt or payment obligation on which such Interest accrues.

"Legal Fees" mean reasonable fees for attorney and paralegal services and court costs incurred in connection with any pending or active litigation, claims or other forms of legal action, including the collection of past due Assessments.

"Living Unit" means each individual single-family residential dwelling unit in the Project, and includes the Lot upon which a Living Unit is constructed.

"Lot" means a portion of the Project Land shown on a Final Plat as a delineated parcel of land upon which a single-family Living Unit is permitted to be erected, and includes any Living Unit which may be constructed thereon. See also Section 1(r) of Part A of Article 16.

"Maintenance" has the meaning identified in Section 1(s) of Part A of Article 16.

"Master Plan" means the master site development plan for the Project approved by the appropriate Governmental Entities, as such may be supplemented or amended from time to time, the current version of which is attached to this Declaration as Exhibit C.

"Member" means a member of the Association. See also Section 1(t) of Part A of Article 16.

"Neighborhood" means any portion of the Project Land developed as a separate neighborhood within the Project Land, as established by a Final Plat (or Plats) for such property, and which may be subjected to a separate Sub Association Declaration.

"Operating Expenses" mean the expenses for which Residential Owners are liable to the Association as described in Article 6 and in the related provisions of the Association Documents, including the "Common Expenses" described in Section 1(i) of Part A of Article 16..

"Owner" means the owner of fee simple title to a Lot or a Living Unit, including Declarant. See also Section 1(x) of Part A of Article 16.

"Person" means a natural individual or any other entity with the legal right to hold title to real property and as otherwise defined in Section 1(y) of Part A of Article 16.

"Planned Community Act" or "Act" means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as may be amended or supplemented from time to time.

"Pond" means a portion of the Project Land shown on the Master Plan or a Final Plat as a delineated parcel of real property that contains all or any portion of a lake, pond, lagoon, retention or detention area (including stormwater wetlands and stormwater wet detention ponds) or similar body of water comprising part of the Project Drainage System.

"Private Drainage Easements" means the non-exclusive easements and rights dedicated and granted to the Association and its Members within those portions of the Project Land shown on a Final Plat as a "Private Storm Drainage Easement" for the purpose of locating, operating, Maintaining, repairing and replacing the Stormwater Control Measures in accordance with this Declaration and the Stormwater Agreement.

"Project" means the master planned residential development to be constructed upon the Project Land.

"Project Drainage System" means the system of stormwater drainage for the Project located on the Project Land, consisting of the Stormwater Control Measures, stormwater wetlands, stormwater wet detention ponds, level spreaders, the Private Drainage Easements, private stormwater drainage easements, underground piping, catch basins, and other related facilities and easements designed and installed to achieve proper drainage for the Project.

"Project Land" means the real property described on Exhibit "A" and any additions thereto of Additional Land made subject to this Declaration as provided in Article 12.

"Recreation Facilities" means the swimming pool, pool house, tennis court(s), tot lot(s) and associated parking areas and related facilities which will be constructed by Declarant and conveyed to and operated by the Association.

"Recreation Land" means the real property consisting of 4.57 acres and designated on the applicable Final Plat as the "Clubhouse Site", upon which the Recreation Facilities are to be constructed by Declarant.

"Registry" means the Register of Deeds Office of Wake County, North Carolina, or such other authorized County office in which deeds and other land records and documents are filed for public notice. See also Section 1(aa) of Part A of Article 16.

"Residential Owner" means the Owner of fee simple title to a Living Unit (but does not include Declarant or any builder who purchased one or more Lots from Declarant for the purpose of constructing a Living Unit thereon, with regard to Assessments payable to the Association during the Declarant Control Period).

"Stormwater Agreement" means the agreement (or agreements, if more than one) recorded in the Registry between Declarant, the City, and the Association, which addresses the rights and obligations of the parties with regard to the Stormwater Control Measures, as is more particularly described in Section 1(ab) of Part A of Article 16. This Project will be subject to more than one (1) Stormwater Agreement.

"Stormwater Control Measures" means the Project Drainage System and other related apparatus and facilities intended to provide stormwater management and control for the Project as more particularly described in Section 1 (ac) of Part A of Article 16.

"Stormwater Maintenance Manual" means the document entitled "Stormwater Operations Maintenance Manual and Budget" attached to the Stormwater Agreement for the purpose of addressing the Maintenance, operation, repair and replacement of the Stormwater Control Measures and the Project Drainage System, required to be adhered to by the Association. A copy of the current Stormwater Maintenance Manual is attached as an exhibit to the Stormwater Agreement.

"Street Island" means any landscaped island or median located within a public street right-of-way to be Maintained by the Association.

"Sub Association" means any subordinate residential owners association organized for the benefit of the Residential Owners within a particular Neighborhood.

"Sub Association Declaration" means a declaration of covenants, conditions, restrictions and other provisions recorded in the Registry for the purposes of providing for the Maintenance and operation of any Sub Association Property within a specific Neighborhood and for membership in a Sub Association by the Residential Owners of the Living Unit in such Neighborhood.

"Sub Association Property" means any real property, together with any Improvements thereon, located within a Neighborhood and owned by a Sub Association, whether in fee, by easement or otherwise, which is limited for the use and enjoyment by the members of the Sub Association.

"Total Planned Units" means the total number of Living Units planned for the Project by the Declarant, as such number may be modified by the Declarant, with the approval of the City, prior to the Turnover Date. As of the date of this Declaration, the Total Planned Units for the Project are 1,039 Living Units. For information, the maximum number of Living Units currently shown on the Master Plan approved by the City is 1,153. As provided in Sections 3 and 4 of Part C of Article 16 hereof, Declarant may, with the approval of the City, amend the Master Plan to add Additional Land, which may result in an increase in the Total Planned Units, but no more than 2,110 Living Units may be developed and constructed on the Property without amendment of this Declaration.

"Turnover Date" means the earlier of (i) the date when ninety (90%) of the Total Planned Units have been conveyed to a Residential Owner, or (ii) the date on which Declarant records in the Registry a document relinquishing its control of the Association to the Members.

ARTICLE 3
PLAN OF DEVELOPMENT OF THE PROJECT

Declarant plans to develop the Project as a master residential single family cluster unit development within which there will be Neighborhoods comprised of the same or similar type of Living Units, which collectively will contain a total of one thousand thirty nine (1,039) Living Units (of the 1,153 Living Units shown on the current Master Plan), the Association Property, and any Sub Association Property located on the Project Land. Declarant intends to develop the Project and each Neighborhood in multiple stages. Additional subsequent stages, if any, may consist of Lots, Living Units, Association Property, and if applicable, Sub Association Property located within any Additional Land made subject to this Declaration as provided in Article 12 and Section 13 of Part A of Article 16, subject to the maximum amount of acreage, units, and density permitted to be included within the Project referred to in Sections 4 and 5 of Part C of Article 16.

Declarant's general plan of development contemplates the construction of Living Units thereon and, further, that various Improvements will be constructed on other portions of the Project Land which will enhance the Project and benefit the Residential Owners, however there is no obligation imposed by this Declaration on the Declarant to build a Living Unit on any particular Lot or portion of the Project Land. Declarant's general plan of development further contemplates that such Living Units shall be whatever types of structures Declarant may choose (subject to the applicable land use, zoning and density requirements of the applicable Governmental Entities). Declarant's general plan of the Project is reflected by the Master Plan and may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to the Project. Declarant reserves the right to increase or decrease the number of Living Units reflected and/or permitted by the Master Plan as approved by the City in accordance with applicable law.

ARTICLE 4
ASSOCIATION PROPERTY

A. Association Property. The Association Property is for the use, enjoyment, and benefit of the Association and the Residential Owners, the residents of the Project, and their respective guests and invitees, tenants, and, subject to the ordinances of the City and other applicable Governmental Entities, and any other Person authorized to use the Association Property or any portion thereof by Declarant or the Association.

B. Recreation Facilities. The Recreation Facilities and the Recreation Land shall be part of the Association Property and shall be used for recreational purposes by the Association, Declarant, the Residential Owners and their family members, guests, invitees and lessees, and other Persons who may be permitted by Declarant to use the Recreation Facilities as provided in this Declaration. Such portion, if any, of the Recreation Land upon which Declarant has constructed, or hereinafter constructs, the Recreation Facilities or other Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Recreation Facilities shall be used for recreational purposes and such proper ancillary uses as may be determined by Declarant (who shall have the right to determine such uses until the Association assumes such right after the Turnover Date). All remaining portions of the Recreation Facilities shown on the Master Plan, including, but not limited to, the swimming pool, shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Facilities shall be maintained, administered and ultimately owned by the Association. The Board may adopt specific rules and regulations regarding the use of the Recreation Facilities as provided in Section N below.

Notwithstanding the foregoing, Declarant has not made and is not deemed by any provision of this Declaration to make, any representation or warranty regarding when the Recreational Facilities will be completed and available for use by the Residential Owners. Each Residential Owner, by acceptance of a deed or other instrument of conveyance of a Living Unit in the Project shall be deemed to have acknowledged and agreed that (i) Declarant is under no obligation to construct any Recreation Facilities by a certain date or within a certain time period, (ii) Declarant has not made any representations or warranties regarding when the Recreation Facilities will be completed and available for use, and (iii) such Residential Owner recognizes that no salesperson, employee, representative, or other agent of Declarant has the expertise or the authority to make any such representations or render any opinions regarding the time frame for the completion of the Recreation Facilities.

During the period following the completion of the Recreation Facilities and the conveyance thereof to the Association and ending on the Turnover Date, Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements or amenities upon the Recreation Facilities. Until the Turnover Date, the decision as to whether to construct additional recreational facilities and the construction thereof shall be in the sole discretion of Declarant.

NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR THE RECREATION FACILITIES, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS. ANY INDIVIDUAL USING THE RECREATION FACILITIES SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

C. Entrance Facilities. The Association shall Maintain, at the Association's sole cost, the Entrance Facilities, including repair and replacement if any such Improvements are damaged or destroyed. The Association shall Maintain such Improvements in a state of good repair and in conformity with the standards maintained in developments of a similar nature and quality as the Project. Notwithstanding the foregoing, the Association shall have the right, at any time, to modify the Entrance Facilities by reducing the amount of landscaping material to be Maintained or by changing the type or density of any such landscaping material.

It is the intent of this Declaration that the Association will Maintain, operate, insure, and repair all of the Entrance Facilities in the Project, including those Entrance Facilities located within or exclusively serving a particular Neighborhood (and not the Project as a whole). The expenses associated with the Maintenance, operation and repair of

Neighborhood (and not the Project as a whole). The expenses associated with the Maintenance, operation and repair of all of the Entrance Facilities shall be an Operating Expense of the Association. The expenses associated with the Entrance Facilities for a particular Neighborhood shall be combined with the aggregate expenses incurred by the Association for all of the Entrance Facilities in the Project and included in the Base Assessment payable by all of the Residential Owners.

D. Residential Streets. Except for any portions of the Property shown on a Final Plat for Attached Units and designated thereon as a private street right-of-way ("Private Streets"), those portions of the Project Land shown on a Final Plat as a right-of-way for vehicular access and all Improvements thereon (the "Residential Streets") shall be dedicated and conveyed to the City for use by the public. Until Declarant dedicates a Residential Street or portion thereof to the City and there is an acceptance of the dedication and road Improvement, there is hereby reserved and granted to the Governmental Entities, a non-exclusive easement across such Residential Street or portion thereof for all governmental purposes including, but not limited to police and fire protection, garbage collection, animal control, mail delivery, building inspection, and all other available public services. Except for the Street Islands and as may otherwise be required by Section 1(h)(6) of Part A of Article 16 , upon the acceptance of the Residential Streets or any portion thereof for public Maintenance by a Governmental Entity, the Association shall have no responsibility for the Maintenance of the Residential Streets that are dedicated to the City, but shall have the right and not the obligation, to provide supplemental Maintenance, together with the City and other applicable Governmental Entity, as the Board may determine in its sole discretion. Notwithstanding the foregoing, the Association shall keep, Maintain, and repair the Street Islands located within the public street right-of-way of the Residential Streets, substantially as in the same fashion as constructed by Declarant and in accordance with standards of the City and all other applicable Governmental Entities.

In addition to the provisions of Part F of Article 16, any Residential Street shown on a Final Plat as a Private Street, and all Improvements thereon, shall be kept and Maintained by the Sub Association for the Neighborhood in which such Private Street is located, substantially in the same condition and fashion as constructed by Declarant and in accordance with governmental standards. The Private Streets shall provide a means of ingress and egress to and from the Attached Units adjacent to such streets for use by the Residential Owners of the subject Attached Units, the Association, Declarant, and the Sub Association for the applicable Neighborhood. There is also hereby reserved and granted to the Governmental Entities, a non-exclusive easement across the Private Streets for all governmental purposes including, but not limited to: police and fire protection, garbage collection, mail delivery, building inspection, and all other available public services.

E. Project Drainage System. The Project Drainage System shall be kept, repaired, replaced, and Maintained by the Association. The Association shall use and Maintain those portions of the Project Drainage System owned or controlled by the Association substantially in the same fashion as constructed by Declarant and in accordance with the Stormwater Maintenance Manual, the Stormwater Agreement and other applicable requirements of the City and other applicable Governmental Entities.

The Project Drainage System shall consist of the Stormwater Control Measures located on portions of the Association Property and within any Private Drainage Easements located on the Lots and Common Areas. The Association shall Maintain and repair any underground piping located beneath the Private Drainage Easements. The Association shall also Maintain the surface area, landscaping, underground piping and all portions of any detention basins and wetlands located on the Association Property, as provided in this Declaration and in the Stormwater Maintenance Manual. The cost of such Maintenance includes, but is not limited to the costs reflected in Section IX, Part A of the Stormwater Maintenance Manual, and the payments referred to in the schedule of "Replacement Contribution Payments" set forth in Section IX, Part C of the Stormwater Maintenance Manual (and on the exhibit of replacement payments attached to the Stormwater Agreement), and shall be reflected in the annual Budget of the Association as Operating Expenses of the Association to be paid with the funds collected from the Residential Lot Owners as Base Assessments (or

as a separate "Stormwater Assessment" if the Board elects to levy an Assessment for those Operating Expenses that is separate from the Base Assessment). See also Part B of Article 16.

Declarant and the Association are required to enter into (or are entering into) the Stormwater Agreement, which includes the obligation to establish a replacement account with the City to provide the estimated funds necessary for future major repairs or replacements of the Stormwater Control Measures for all existing and future Phases of the Project. Declarant shall contribute the initial funds to establish the replacement account as required by the Stormwater Agreement, which includes the obligation to make the first "Replacement Contribution Payment" specified in the Stormwater Maintenance Manual (and as reflected on the "Schedule of Replacement Payments" attached to the Stormwater Agreement). Thereafter, the Association shall make the annual payments into the replacement account according to the "Schedule of Replacement Payments" attached to the Stormwater Agreement. If the Association or the City withdraws funds from the replacement account as permitted in the Stormwater Agreement, the Association is obligated to replenish the funds so withdrawn. The Stormwater Agreement allows the Association to draw funds from the replacement account, with the consent of the City, for the purpose of funding major repair or reconstruction of the Stormwater Control Measures. The City also has the right to inspect the Stormwater Control Measures and to perform the Association's obligation to Maintain, repair and replace the Stormwater Control Measures, if the Association fails to do so (as determined in the City's sole discretion). If the City performs any of the Association's obligations under the Stormwater Agreement as permitted thereby, the City shall be reimbursed out of the funds in the replacement account or otherwise reimbursed by the Association. Any expenses incurred by the Association as a result of the obligation to replenish funds withdrawn from the replacement account by the Association or the City shall be the subject of a Special Assessment that the Board may impose pursuant to Section D.2 of Article 6 and the applicable sections of Part B of Article 16. The Association shall not be permitted to withdraw any funds from the replacement account in order to fund the expenses incurred by the Association in performing the routine and recommended Maintenance and repair of the Stormwater Control Measures as required by this Declaration, the Stormwater Maintenance Manual, and the Stormwater Agreement, which expenses shall be assessed as part of the Base Assessment (or as a separate Stormwater Assessment) as provided in the above sub-paragraph.

F. Open Space. Those portions of the Property identified on a Final Plat as an open space or similar area and any Improvements installed thereon shall be owned, used and Maintained by the Association in substantially the same fashion as installed and constructed by Declarant and in accordance with Section 1 of Part C of Article 16 and any other applicable City requirements. Any open space or similar area designated on a Final Plat for ownership and use by a Sub Association shall not be Association Property as provided in Section O of this Section and such lands shall be regulated by Section 1 of Part D of Article 16. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure or Improvement shall occur within "Permanently Protected Undisturbed Open Space Areas", except in accordance with a watercourse buffer permit first being issued by the City.

G. Play Areas. Any portion of the Project Land shown on a Final Plat as a separate parcel of property for use as a private park or recreation area, playground, or "tot-lot", or otherwise established for use as an open recreation area, and all Improvements (if any) constructed thereon shall be owned by the Association. Any Play Area shall be used and Maintained by the Association in accordance with any applicable requirements and regulations of the City and other applicable Governmental Entities.

H. Buffers; Landscape Areas; Protective Yards. Any portion of the Property shown on a Final Plat as a landscape area, landscape easement, buffer, perimeter protective yard, or otherwise established to provide a landscaped or natural area buffer between the Project Land and the adjacent properties ("Buffer Area") shall be used and Maintained by the Association either substantially in the same fashion as constructed by Declarant, or in its natural state as required by City zoning regulations. To the extent that any portion of a Buffer Area is located upon any Lot, an easement upon the applicable portion of such Lot is hereby reserved in favor of Declarant and the Association as provided in Section B of Article 8, and no Residential Owner shall perform or allow any land-disturbing activity, removal of vegetation, encroachment, construction or erection of any Improvements within any portion of such Residential Owner's Lot

contained within a Buffer Area, except with the approval of the Committee and if applicable, the City and any other Governmental Entities having jurisdiction over the Buffer Areas in the Project.

Portions of the properties will contain undisturbed protective yards as required by the City. Notwithstanding the foregoing, in such areas, Declarant or the Association shall have the right to install a paved or unpaved walking trail, not wider than five feet (5'), utilities, and stormwater control and treatment facilities and devices. Furthermore, the Association or, with the consent of the Association, the Owner of the portion of the Properties containing an undisturbed protective yard, may remove underbush, and dead, dying, diseased and/or noxious vegetation from such protective yard.

I. Right to Add Additional Improvements. Such portions of the Association Property upon which Declarant has constructed, or hereinafter constructs, Improvements shall be kept and Maintained for use in a manner consistent with the nature of such Improvements located, or to be located thereon. Until the Turnover Date, Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Association Property. Until the Turnover Date, the decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

J. Private Use. Except as may otherwise be expressly provided for herein, for the term of this Declaration, the Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Residential Owners, their family members, guests, invitees and lessees, and any other Person authorized to use the Association Property or any portion thereof by Declarant or the Association but only in accordance with this Declaration and the laws, ordinances and regulations of the City and the applicable Governmental Entities.

K. Sub Association Property. Sub Association Property is expressly reserved for the private use and enjoyment of Declarant, the Sub Association to which the Sub Association Property is conveyed or reserved, and the Residential Owners who are members of the applicable Sub Association, their family members, guests, invitees and lessees, and any other Person authorized to use the Sub Association Property or any portion thereof by Declarant or the Sub Association, but only in accordance with the applicable Sub Association Declaration and the laws, ordinances and regulations of the City and the applicable Governmental Entities. Easements in and to the Sub Association Property are hereby reserved for the benefit of Declarant and/or the Association as provided in Section L of this Article 4 and in Article 8 hereof.

L. Declarant's Rights to Use Association Property. Declarant expressly reserves the right to use the Association Property, the Sub Association Property, the Lots and the unsold Living Units in connection with the sale and marketing by Declarant of Living Units or Lots in the Project, including, but not limited to, the holding of sales and marketing meetings, sales promotions and related activities.

M. Conveyance of Association Property. Declarant agrees that fee simple title or other applicable interest in and to the Association Property shall be conveyed to the Association, by deeds, bills of sale, easements, assignments, or leases, as applicable, and the Association is obligated to accept, fee simple title or other applicable interest in and to the Association Property, subject to: (i) the terms and provisions of this Declaration; (ii) all applicable Association Documents; (iii) real estate taxes for the year of such conveyance; (iv) all applicable zoning ordinances; and (v) utility, greenway, conservation, and drainage easements. While Declarant shall have the right to convey or cause to be conveyed all or such portions of the Association Property as Declarant shall from time to time determine, the conveyance of the Association Property located within any Phase or portion of the Project shall be effectuated no later than the conveyance by Declarant of the first Living Unit shown on the Final Plat for such Phase or portion of the Project, and all conveyances of Open Space shall be subject to Section 1 of Part C of Article 16. At the time of conveyance of the Association Property or any portions thereof, the Association shall be required to accept such conveyance of the Association Property or portions thereof and the personal property and Improvements appurtenant thereto. The Association hereby agrees to

accept the Association Property and the personal property and Improvements appurtenant thereto "AS IS", without any representation or warranty, expressed, implied, in fact or by law, as to the condition or fitness of the Association Property and the personal property and Improvements thereon, subject to the obligation of Declarant to convey the Association Property to the Association free of any liens or encumbrances, including, but not limited to, any mortgages, deeds of trust, or mechanic's or materialmen's liens for any work performed by or on behalf of such developers for the completion of the Improvements to the Association Property.

The Association Property may not be mortgaged or conveyed by the Association without (i) the approval of at least eighty percent (80%) of the Members, and (ii) compliance with and satisfaction of any applicable provisions of the Planned Community Act, including the affirmative approval of any other percentage of Members or of votes attributable to the Members (or each class of Members) than the percentage specified herein as may be prescribed by the Planned Community Act. All rights of the mortgagee shall be subordinate to the rights of the Association and its Members. Easements granted or permitted in the Association Property and, as long as the land area of the Association Property is not materially reduced, conveyances for the purpose of eliminating encroachments or making minor necessary boundary adjustments shall not be considered to be a conveyance of such Association Property and shall not require the approval or consent of the Members or any other Person except if applicable, the approval of the planning director of the City.

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance to the Association filed in the Registry, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any Person, including the grantor, lessor and/or Association.

N. Rules and Regulations. The Association shall be entitled to adopt and enforce reasonable rules and regulations related to the use and operation of the Association Property and the Lots. All Owners and users of the Association Property shall be subject to comply with such rules and regulations, provided any such rules and regulations are not applied or enforced in a discriminatory manner. Enforcement of such rules and regulations can include the right to prohibit use, deny access to facilities, and suspend voting rights of Members for material violations subject to the limitations on the suspension of certain rights as provided in Section 6(b) of Part A of Article 16. The rules and regulations so promulgated shall, in all respects, be consistent with the provisions of the Association Documents.

O. Sub Association Property. The Sub Association Property is not a part of the Association Property and shall be owned and Maintained by the applicable Sub Association for the Neighborhood in which such Sub Association Property is located. Notwithstanding the foregoing, all Sub Association Declarations shall give Declarant and the Association the right to perform any obligations of the Sub-Association if such Sub-Association fails to perform such obligations as more particularly set forth in such Sub Association Declaration and the right of access for such purposes.

ARTICLE 5
ASSOCIATION MEMBERSHIP AND GOVERNANCE

A. Membership. Every Owner, including Declarant, of a Lot will be a Member of the Association. Ownership of a Lot will be the sole qualification for such membership. If fee title to a Lot is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

B. Voting Rights. The Association will have two (2) types of voting memberships which are as follows:

1. "Class A Members" will be Owners (including Declarant) of Lots. A Class A Member will be

1. "Class A Members" will be Owners (including Declarant) of Lots. A Class A Member will be

entitled to one (1) vote for each Lot owned.

2. "Class B Members" shall be Declarant or its designated assign. The Class B Member will be entitled to three times the total number of votes of the Class A Members, plus one (1) vote, until the Turnover Date. Thereafter, Declarant will have only one (1) vote for each Lot that it owns.

Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof. On the Turnover Date, Class A Members, including Declarant, shall assume control of the Association and elect the Board.

C. Voting By Multiple Owners. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, may determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. See also Section 6(c) of Part A of Article 16.

D. Association Governance by Board. The Board shall consist of three (3) or five (5) members, who will govern the Association. Initially, prior to the Turnover Date, the Board will consist of three (3) members appointed by the Declarant, and following the Turnover Date, the Board will consist of five (5) members elected as provided in the Bylaws.

E. Meetings and Membership Voting. Except as otherwise provided in this Declaration, rules and procedures of the Association, including, but not limited to, conducting elections, meetings (both regular and special), and for casting of votes by Members, and the number thereof required for quorums and approval or ratification, shall be as set forth in the Bylaws.

ARTICLE 6
ASSESSMENTS AND OPERATING EXPENSES;

A. Affirmative Covenant to Pay Operating Expenses. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; (ii) fund the Common Expenses, and (iii) Maintain, operate and preserve the Association Property for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Living Unit and Residential Owner, the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Base Assessments, Special Assessments, Individual Expense Assessments, Working Capital Contributions, and the "Stormwater Assessments" referred to in Section 2 of Part B of Article 16 (which may be a separate Assessment or included in the Base Assessment). Each Residential Owner, by acceptance of a deed or other instrument of conveyance of a Living Unit from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Operating Expenses in accordance with the provisions of the Association Documents.

B. Establishment of Liens. Any and all Assessments made by the Association in accordance with the Association Documents, together with Interest thereon and costs of collection (including, but not limited to, Legal Fees), are declared to be a charge and continuing lien upon each Living Unit against which each such Assessment is made. Each Assessment against a Living Unit (together with Interest thereon and costs of collection) shall be the personal obligation of the Residential Owner thereof. Said lien shall be effective only from and after the date a written, acknowledged claim of lien and statement of the Board setting forth the amount due to the Association as of the date the statement is signed and is filed in the office of the Clerk of Court for Wake County, North Carolina, as provided in

N.C.G.S. § 47F-3-116. The Association may file such lien and statement at any time following the expiration of thirty (30) days following the date such Assessment(s) or installment(s) thereof became due and payable. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Where an Institutional Mortgagee obtains title to a Living Unit as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such Institutional Mortgagee shall not be liable for the share of Assessments pertaining to such Living Unit that became due prior to the acquisition of title by such Mortgagee as a result of the foreclosure or deed in lieu thereof, unless the Assessment is secured by a claim of lien for Assessments recorded prior to the recording of the applicable mortgage.

C. Amount of Base Assessment. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Association Documents. The first Budget and all subsequent Budgets prepared during the period that Declarant funds any "Operating Deficit" as provided in Section 5(f) of Part A of Article 16, shall be based upon a projection of the total Operating Expenses at full build-out of the Project and the Base Assessment shall be determined as the lesser of (i) the quotient obtained by dividing the amount of the total anticipated Operating Expenses at full build-out by a number equal to 75% of the Total Planned Units, or (ii) the amount specified in Section 5(c) of Part A of Article 16 (as may adjusted according to such Section).

Within 30 days after adoption of a Budget, the Board shall provide to all Residential Owners, a summary of the Budget and a notice of the meeting to consider ratification of the Budget, in accordance with the provisions of Section 5(c) of Part A of Article 16.

D. Special Assessment.

1. In General. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents, those Assessments which are levied for capital Improvements, which include the costs of constructing or acquiring Improvements on or for the Association Property and the costs of repairing, reconstructing or replacing such Improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Living Units shall be paid by the Residential Owners in addition to any other Assessments. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. In any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Except as set forth in subparagraph 2 below, in any fiscal year of the Association prior to the Turnover Date, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted Operating Expenses of the Association for that fiscal year shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the Turnover Date in an amount equal to 5% or less of the budgeted Operating Expenses of the Association for a fiscal year may be levied by the Board without the approval or consent of the Residential Owners or any other party.

2. Special Stormwater Assessment. Notwithstanding the requirements of Section D.1 of this Article 6 and as required by the applicable sections of Part B of Article 16, the Association, acting by and through the Board, shall have the right to levy a Special Assessment for the purpose of funding any monetary obligations that the Association may have to replenish the funds in the replacement account established in accordance with the Stormwater Agreement as a result of the withdrawal of funds from the account by the Association or the City. The Board may levy any such Special Assessment without the approval or consent of any Owner, Member, or any other party. The right of the Association to enforce its lien for payment of such Special Assessment may be exercised by either the Association or the City. The Association hereby assigns to the City, its rights to claim and enforce the lien for any Special Assessment levied pursuant to this Section D.2, who may act on behalf of the Association and shall have all of the rights of the Association, including those rights in Section J of this Article 6, with respect to any such Special Assessment levied hereby.

E. Individual Expense Assessments. Individual Expense Assessments include any Assessment levied against a Residential Owner as a result of such Residential Owner's misuse or mistreatment of the Association Property or such Residential Owner's failure to comply with the Association Documents, including, but not limited to, non-

such Residential Owner's failure to comply with the Association Documents, including, but not limited to, non-compliance of Living Units and any other Improvements or personal property contained therein with the standards set forth in the Association Documents. The amount of the Individual Expense Assessment(s) shall be equal to the amount of any additional costs and expenses incurred by Declarant or the Association as a result of such Residential Owner's misuse or mistreatment of Association Property or failure or refusal to comply with the Association Documents. The Individual Expense Assessment and any late charges relating thereto shall be assessed and collected and enforced in the same manner as any other Assessments hereunder. Individual Expense Assessments shall be in addition to and not part of any other Assessment. For the purposes of this Section, the term "Residential Owner" shall also mean any such Residential Owner's family members, guests, or lessees, and such lessee's family members, or guests.

F. Working Capital Contribution. The first Residential Owner who purchases a Living Unit from Declarant or a builder who constructed the Living Unit shall pay to the Association at the time title is conveyed to such Residential Owner a "Working Capital Contribution". The Working Capital Contribution shall be Three Hundred Dollars ($300.00) for an Attached Unit and Five Hundred Dollars ($500.00) for a Detached Unit. The purpose of the Working Capital Contribution is to insure that the Association will have cash available for initial start up expenses including, but not limited to Operating Expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Base Assessments and shall have no effect on future Base Assessments. Working Capital Contributions are payable only by the first Residential Owner and any Residential Owner who is not the first purchaser of a Living Unit, but buys the Living Unit from another Residential Owner, shall have no obligation to pay a Working Capital Contribution.

G. Collection of Assessments. If any Residential Owner shall fail to pay any Assessment (or installment thereof) charged to such Residential Owner within thirty (30) days after the same becomes due, then the Association shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To advance on behalf of the Residential Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Residential Owner(s) is liable to the Association. The amount of any funds so advanced, together with Interest and all costs of collection thereof (including, but not limited to, Legal Fees), may be collected by the Association and such advance by the Association shall not waive the Residential Owner's default.

2. To file a lien as provided in § 47F-3-116 of the Act and foreclose its lien at any time after the effective date of such lien. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes or as otherwise provided in the Planned Community Act.

3. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

4. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars ($25.00).

H. Payments by Declarant and Institutional Mortgagees. Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Living Units. Declarant and any Institutional Mortgagees shall also have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association when overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association, plus Interest and any costs of collection. The Association shall execute an instrument in recordable form evidencing the Association's

obligation to make such immediate reimbursement and deliver the original of such instrument to each party who is so entitled to reimbursement.

I. Rental and Receiver. If a Residential Owner remains in possession of his Living Unit and the claim of lien of the Association against his Living Unit is foreclosed and the Association acquires such Living Unit at the foreclosure sale, the court, in its discretion, may require the Residential Owner to pay a reasonable rental for the Living Unit, and the Association is entitled to the appointment of a receiver to collect the rent.

J. Assignment of Claim and Lien Rights. The Association, acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other monies owed to the Association, to any third party, including but not limited to, the rights referred to in Section D.2 of Article 6. As provided in Section 4 of Part B of Article 16, the Association has assigned certain rights to the City related to the funds to be collected by the Association for the Maintenance, repair, inspection, operation, replacement and reconstruction of the Stormwater Control Measures, which rights may be enforced by the City as provided in said Section 4 of Part B of Article 16.

K. Certificate of Payment. Within ten (10) business days after written request by any Residential Owner or any Institutional Mortgagee, the Association shall provide the requesting party a written certificate as to whether or not the Residential Owner of the Living Unit is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration. Any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Living Unit shall be protected thereby.

L. Application of Payments. Any payments made to the Association by any Residential Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other moneys owed to the Association by the Residential Owner and/or for the enforcement of its lien; next towards Interest on any Assessments or other moneys due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

M. Assessment Payments. The Base Assessments shall be payable in advance in monthly, quarterly, annual or semi-annual installments as determined by the Board.

N. Liability of Residential Owners for Individual Assessments. By the acceptance of a deed or other instrument of conveyance of a Living Unit in the Project, each Residential Owner thereof acknowledges that the Residential Owners are jointly and severally liable for their own Base Assessment and their applicable portion of any Special Assessments as well as for all Individual Expense Assessments for which they are liable. Such Residential Owners further recognize and covenant that they are jointly and severally liable with all Residential Owners for the payment of Operating Expenses. Each Residential Owner recognizes and agrees that if other Residential Owners fail or refuse to pay their Assessments or any portion thereof, then the remaining Residential Owners may be responsible for increased Base Assessments or a Special Assessment or other Assessments levied as a result of such nonpayment. Any such increased Base Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments in accordance with the Association Documents.

O. Sub Association Assessments. Residential Owners whose Living Units are subject to a Sub Association Declaration shall be assessed for the payment of assessments to the applicable Sub Association. Those assessments shall be for the purpose of funding the expenses incurred by the Sub Association for Maintaining the Sub Association Property within such Neighborhood and as otherwise provided by the terms of the applicable Sub Association Declaration. The assessments due to a Sub Association shall be established as provided in the Sub Association Declaration and are in addition to and independent of any Assessment or charge levied under this Declaration. The Sub Association will also have lien rights against each Living Unit subject to the applicable Sub Association Declaration, which lien may be filed and foreclosed as provided in §47F-3-116 of the Act, in the event of the non-payment of any assessment due to such Sub

Association. For a complete and accurate description of the assessment obligations of Residential Owners who are subject to assessment by a Sub Association, such Residential Owners should refer to the Sub Association Declaration and the other governing documents for their Sub Association.

the other governing documents for their Sub Association.

P. Operating Expenses. The Assessments for Operating Expenses are payable by each Residential Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Association Property to the Association. Operating Expenses shall include the cost of all items or expenses incurred by or on behalf of, the Association for the benefit of the Association, the Association Property, the Project, the Project Land, the Lots and Living Units, and the Residential Owners, the "Common Expenses" referred to in Part A of Article 16, and any other expenses determined to be an appropriate item of Operating Expense by the Board. Operating Expenses include, but are not limited to, the following expenses, costs, fees and charges:

1. Taxes. Any and all taxes levied or assessed at any and all times by any and all taxing authorities against the Association Property and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.

2. Utility Charges. All charges levied for utilities providing services for the Association Property whether supplied by a private or public firm, including (but not limited to) all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge. If the applicable electric service provider requires or permits the Association to pay the charges for the electricity supplied to illuminate the street lights, such charges shall be an Operating Expense. Otherwise, the electric consumption costs for illuminating the street lights shall be allocated among the Residential Owners (as determined by the electric service provider) and billed directly to the affected Residential Owners, and the Association shall have no obligation or responsibility for the costs of such electricity or for the manner in which such costs are allocated among the Residential Owners.

3. Insurance. The premiums on any policy or policies of insurance required to be kept in effect by the Association under this Declaration and the premiums on any policy or policies the Association determines to maintain even if not required by the specific terms of this Declaration.

4. Destruction of Buildings or Improvements on the Association Property. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Association Property by fire, windstorm, flood or other casualty, regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be paid to the Association, which shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage and the procedures for disbursement of any such insurance proceeds or funds shall be in accordance with the applicable and/or additional provisions of the Planned Community Act (if any). The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments. The Association agrees that it will commence the Special Assessments process to provide the funds for the cost of reconstruction or construction within sixty (60) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within a reasonable period of time from the date of damage.

5. Maintenance, Repair and Replacements. All expenses necessary to keep and Maintain, repair and replace any and all buildings, other Improvements, personal property and furniture, fixtures and equipment upon the Association Property, including landscaping, lawn and sprinkler service, in a manner consistent with the standards and requirements in the Association Documents and in compliance with the requirements and regulations of all applicable Governmental Entities having jurisdiction over the Project.

6. Stormwater Agreement/Stormwater Assessments. The expenses incurred by the Association in Maintaining, operating, inspecting, and repairing the Stormwater Control Measures and the Project Drainage System which include, but are not limited to, the annual expenses reflected in Section VIII, Part A of the System which include, but are not limited to, the annual expenses reflected in Section VIII, Part A of the Stormwater Maintenance Manual, together with the scheduled annual contributions required to be made by the Association to the replacement account maintained by the City pursuant to the Stormwater Agreement, shall be Operating Expenses of the Association. The foregoing Operating Expenses shall comprise the "Stormwater Assessment" referred to in Section 2 of Part B of Article 16, and may be levied as a separate Assessment for the exclusive purposes of funding such expenses or may be combined with other Operating Expenses and levied as part of the Base Assessments. Provided, however, any expenses incurred by the Association as a result of the City or the Association withdrawing funds from the replacement account as permitted by the Stormwater Agreement shall be the subject of a Special Assessment as provided in Section D of Article 4 and in accordance with Section D.2 of Article 6.

7. Additional or Offsite Maintenance. The expenses of any additional Maintenance that the Board elects to provide in order to enhance the overall appearance of the Project for or on any property or Improvements located within or outside of the Project, if permitted by the owner of such property or the Governmental Entity responsible for Maintaining same.

8. Indemnification. The costs of fulfilling the covenant of indemnification in Section G of Article 15.

9. Administrative and Operational Expenses. The costs of administration of the Association including, but not limited to, the costs of retaining a management company, as necessary to carry out the obligations and covenants of the Association.

10. Compliance with Laws. The cost and expense of the Association's compliance with all applicable laws, statutes, ordinances and regulations of any Governmental Entity, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions, environmental conditions, and fire hazards.

11. Non-Payment of Assessments. Funds needed for Operating Expenses due to a foreclosure by an Institutional Mortgagee being exempted from assessments (see Article 6, Section B), or due to failure or refusal of Residential Owners to pay the Assessments levied. Provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Residential Owners to pay a Special Assessment shall be deemed to be a Special Assessment.

12. Costs of Reserves. The funds necessary to establish an adequate reserve fund ("Reserve") for periodic Maintenance, repair, and replacement of the Association Property and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Residential Owner shall have any interest, claim or right to such Reserves.

13. Miscellaneous Expenses. The cost of all items or costs or expenses pertaining to or for the benefit of the Association, the Association Property, the Lots, the Living Units, the Project, or any part thereof, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

14. Legal Action. Legal expenses incurred by the Association to begin legal proceedings shall be deemed an Operating Expense, but such legal expenses shall be paid by a Special Assessment and not from the Base Assessment.

ARTICLE 7
INSURANCE AND CONDEMNATION

The Association shall purchase and keep the following insurance coverage in effect subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

A. Casualty Insurance. Property and casualty insurance in the name of the Association and naming Declarant as an additional named insured for so long as Declarant owns any portion of the Project Land, in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned, or to be owned, by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks as are customarily covered with respect to areas similar to the Association Property in developments similar to the Project in construction, location and use. If insurance proceeds are payable to the Association as a result of casualty and the Association is obligated or elects to repair or reconstruct the Improvements damaged or destroyed by such casualty, such insurance money shall be paid to the Association, which shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage.

B. Public Liability Insurance. A comprehensive policy of public liability insurance naming Declarant as an additional named insured until Declarant's ownership of any portion of the Project Land ceases, insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, Maintenance and use of the Association Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars ($1,000,000) for damages incurred or claimed by any one person for any one occurrence; not less than One Million Dollars ($1,000,000) for damages incurred or claimed for any one occurrence; and for not less than Fifty Thousand Dollars ($50,000) property damage per occurrence with no separate limits stated for the number of claims.

C. Fidelity Coverage. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all other who handle and are responsible for handling funds of the Association shall be kept by the Association in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

D. Other Insurance. Such other forms of insurance and in such coverage amounts as the Association shall determine to be required or beneficial for the protection or preservation of the Association Property and any Improvements now or hereafter located thereon or in the best interests of the Association.

E. Cancellation or Modification. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least thirty (30) days prior written notice to the Association.

F. Condemnation. In the event the Association receives any award or payment arising from the taking of any Association Property owned in fee or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Association and the remaining balance thereof, if any, shall be allocated or applied as determined by the Board.

G. Planned Community Act. The insurance Maintained by the Association and the application, allocation or distribution of the proceeds thereof shall be subject to Section 47F-1 13 of the Planned Community Act and any other applicable terms and provisions of the Planned Community Act.

H. Property Damage and Casualty Insurance for Attached Units. The Residential Owner of an Attached Unit shall be required to Maintain a property damage and casualty insurance or "hazard" insurance policy in accordance

with the provisions and requirements of the Sub Association Declaration for the Neighborhood in which such Living Unit is located, which includes but shall not be limited to, the provision of copies of current insurance policies and all replacements or renewals thereof to the applicable Sub Association.

replacements or renewals thereof to the applicable Sub Association.

ARTICLE 8
EASEMENTS

A. Recognition of Existing Easements. Each Residential Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Project Land under this Declaration.

B. Reservation and Establishments of Easements. In addition to the easements set forth and specifically granted and referred to in other provisions of this Declaration, this Declaration hereby creates and establishes the following perpetual easements over and across the Project Land as covenants running with the Project Land for the benefit of the Residential Owners, the Association, Declarant, and other Persons as hereinafter specified for the following purposes:

1. Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any Governmental Entity or private utility company or other Person, upon, over, under, and across all of the Association Property in accordance with this Declaration; as shown on the Master Plan or a Final Plat; and other such easement areas recited in any Supplement for the purpose of installing, replacing, repairing, Maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, the Project Drainage System, and electrical, gas, telephone, water, and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that for as long as the Declarant owns any of the Project Land primarily for the purpose of development and sale, the Board must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Project and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or Person, with respect to the portions of the Project Land so encumbered, to erect and Maintain pipes, lines, manholes, pumps, meters, sewer cleanouts, and other necessary equipment and facilities, to cut and remove any trees, bushes, or shrubbery, to grade, excavate, or fill, or to take any other similar action reasonable necessary to provide economical and safe installation, Maintenance, repair, replacement, and use of such utilities and systems.

2. Easement for Encroachment. If (i) any Improvements which are constructed as Association Property or upon Association Property, or (ii) any Improvements which are specifically constructed upon a Lot (subject to the limitation described below), encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of such Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its Maintenance shall exist so long as the encroachment remains, provided, however, that in no event shall such an easement exist for willful encroachments. This easement shall only apply to Improvements upon a Lot which constitute completed building Improvements which do not encroach more than three (3) feet into or upon an adjacent Lot and are in compliance with applicable zoning and other laws and regulations, and shall not include fences, walls, patios, antennas, driveways, walkways, sign, mailboxes, pools, tennis courts, landscaping or other structures or Improvements which are not a completed building Improvement. If any Lot Improvement of the type described in the foregoing sentences encroaches upon the Association Property as a result of construction, reconstruction, repair, shifting, settlement or movement of the subject Lot Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its Maintenance shall exist so long as the encroachment remains, provided, however, that in no event shall such an easement exist for willful encroachments.

3. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of Declarant, the Committee, the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of inspecting any construction, proposed construction of Improvements, or fulfilling its duties and

for the purposes of inspecting any construction, proposed construction of Improvements, or fulfilling its duties and

responsibilities of ownership, Maintenance and/or repair in accordance with the Association Documents, including the making of such repairs, Maintenance or reconstruction as are necessary for the Association Property or any Living Unit.

4. Easement Over Association Property. An easement of use and enjoyment in favor of all Residential Owners, their family members, guests, invitees and lessees in and to the Association Property, which easement shall be appurtenant to and shall pass with title to every Living Unit, subject to the following:

i. the right of the Association to suspend the voting rights and rights to use the Association Property of any Residential Owner for any period during which Assessments against his Living Unit remains unpaid, provided, however, that 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

ii. the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper Maintenance or operation of the Project;

iii. all provisions set forth in the Association Documents, including the easements granted and reserved in this Declaration;

iv. Declarant's right to add Additional Land to this Declaration and the rights to grant easements for the benefit of any such Additional Land added to this Declaration; and

v. all existing easements of record.

5. Project Drainage Easement. An easement is hereby established over, under, across and upon all portions of the Project Land for the benefit of the remainder of the Project Land (the "Project Drainage Easement"). The Project Drainage Easement shall be for the purpose of installing, constructing, Maintaining, using, operating, repairing and replacing so much of the Project Drainage System as located in the burdened property as may be required to provide stormwater control for the benefited property in accordance with the approved development plans for the Project Drainage System. The location of the Project Drainage Easement on the Project Land shall be as reflected on the Final Plat of the applicable property. The Project Drainage Easement also includes reasonable rights to enter upon the Project Land in order to access the locations, facilities, and installations of the Project Drainage System thereon, and the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that Declarant, the Association, or any applicable Governmental Entity having jurisdiction over the Project Drainage System, deems reasonably necessary or appropriate, as provided in this Declaration and in the Stormwater Agreement.

6. Private Drainage Easements. The Private Drainage Easements affect specific portions of the Project Land in which portions of the Project Drainage System are located. The Private Drainage Easements are shown on the Final Plat and are hereby granted and dedicated in favor of the Association for the purpose of enabling the Association to perform its obligation to operate, Maintain, repair, and replace the Project Drainage System. Pursuant to the Stormwater Agreement, Declarant is granting (or shall grant) to the City easement rights within the Private Drainage Easements. The City shall have the same rights as the Association over, under and upon the portions of the Project Land subject to the Private Drainage Easements, for reasonable rights of access for persons and equipment to monitor, construct, install, Maintain, alter, inspect, remove, relocate, replace, and repair the Stormwater Control Measures, and to correct drainage or surface water runoff in accordance with the provisions of the Stormwater Agreement. Such rights expressly include the right of the City to perform the obligations of the Association if the Association fails to adequately operate, Maintain, keep, repair, replace and reconstruct all or any portion of the Project Drainage System, as provided in the Stormwater Agreement.

7. Sale and Development Easement. An easement in favor of Declarant over, upon, across and under the Project Land as may be reasonably required in connection with the development, construction, sale and promotion, or leasing, of any Living Units within the Project or within any other property owned by Declarant,

promotion, or leasing, of any Living Units within the Project or within any other property owned by Declarant, provided that no such easement shall be located within or upon any Living Unit and shall not materially adversely impair or diminish any Residential Owner's use or enjoyment of such Residential Owner's Living Unit.

8. Maintenance Easements. If any Living Unit is located closer than five (5) feet from its Lot line or if any utility lines or facilities exclusively serving a Living Unit are located in whole or in part on an adjoining Lot, the Residential Owner of said Living Unit shall have a perpetual access easement over the adjoining Lot to (i) repair, Maintain, perform, paint, or reconstruct his Living Unit, and (ii) to repair, Maintain, replace, and inspect any utility lines or facilities serving his Living Unit. No fence or vegetation shall be located within said easement area.

9. Blanket Easement. An easement is hereby reserved in favor Declarant and the Association over the Living Units, the Association Property, for the installation, operation, inspection, and Maintenance of landscaping, a common cable television system, a common sprinkler system, entrance sign or features, or any other item for the common enjoyment and benefit of the Residential Owners. No Residential Owner shall damage, destroy, alter or otherwise disrupt any of such items so installed. Each Residential Owner shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any of such items which are damaged or destroyed the acts of such Residential Owner, his family, his guests or invitees.

10. Easement over Sub Association Property. An easement is hereby reserved in favor of Declarant and the Association over the Sub Association Property, for the purposes of allowing the Association to Maintain, repair, access, and otherwise perform work on the Sub Association Property if a Sub Association fails to perform any of its obligations to Maintain, repair and otherwise keep the Sub Association Property in good working order and condition in accordance with the applicable Sub Association Declaration, or if any Maintenance, repair, installation, alteration or work on the Association Property requires that Declarant or the Association have access to the Sub Association Property.

11. Landscape and Sign Easement. An easement for the preservation, installation, Maintenance, repair, and replacement of the Entrance Facilities, and any entry monument, sign, landscaping, or other facilities located in any portion of the Project Land shown on a Final Plat as a landscape or sign easement is reserved in favor of Declarant and the Association over, upon, across and under such portion of the Project Land. The Residential Owner of any Lot on which any landscape or sign easement is located, his or her family members, tenants, agents or contractors shall not remove, harm or damage any landscaping, signage, or other Improvements installed by Declarant or the Association within said easement.

12. Buffer Area Easement. An easement for the preservation and Maintenance of the Buffer Areas shown on a Final Plat is reserved in favor of Declarant and the Association over, upon, across and under the applicable portion of the Project Land on which any portion of a Buffer Area is located. The Residential Owner of any Lot on which any portion of a Buffer Area is located, his or her family members, tenants, agents or contractors shall not remove, harm, damage or alter, any landscaping installed by Declarant or the Association within said easement, and shall not be permitted to install or construct any Improvements within said easement without the prior written approval of the Committee, and if applicable, the City and other Governmental Entities having jurisdiction over the Buffer Areas.

13. Declarant's Easement to Inspect Lots and Living Units. A perpetual easement is hereby reserved in favor of Declarant over and upon the Project Land for the purpose of allowing Declarant's inspection of the structural portions of the Living Units and the grade and contour of the Lots. Declarant's easement to perform such inspections shall be perpetual to the extent permitted by applicable law and not subject to the provisions of Section C below.

14. Additional Easements. Part A of Article 16 of this Declaration may contain easements that are not otherwise reflected in this Article 8. To the extent that there are differences in Article 16 and this Article 8, the easements should be broadly construed, provided, however, that if there are specific conflicts between the description

of the easements in the two Articles, in which event the language of Article 16 shall control. All Residential Owners should refer to Article 16 for a description of any additional easements. Declarant (until the Turnover Date) and the Association, on their own behalf and on behalf of all Residential Owners, each shall have the right to (i) grant additional easements over, upon, under and/or across the Association Property in favor of Declarant or any Person, entity, Governmental Entity or utility company, or modify, relocate, abandon or terminate existing easements benefiting or affecting the Project Land. In connection with the grant, modification, relocation, abandonment or termination of any easement, Declarant reserves the right to relocate roads, parking areas, utility lines, and other Improvements upon or serving the Project Land. So long as the foregoing will not adversely interfere with the use of Living Units for dwelling purposes, no consent of any Residential Owner or any mortgagee of any Living Unit shall be required or only the consent of the Residential Owners and Institutional Mortgagees adversely affected shall be required. To the extent required, all Residential Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes.

C. Assignments. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any Governmental Entity, or any duly licensed or franchised public utility, or any other designee of Declarant. The Residential Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Project Land or portions thereof in accordance with the provisions of this Declaration.

Except as may be expressly provided otherwise, all easement rights reserved or granted to Declarant shall terminate upon Declarant's no longer owning any portion or interest in the Project Land for sale in the ordinary course of business. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE 9
MAINTENANCE AND REPAIR

A. By the Association. Except as otherwise specifically set forth herein, the Association shall inspect, operate, repair, Maintain and replace any and all Improvements located on the Association Property commencing with the completion of such Improvements by Declarant. The Improvements shall be Maintained in the same condition as originally constructed by Declarant, subject to reasonable and customary wear and tear. If any damage or destruction occurs to the Association Property or to the Improvements and facilities located thereon by fire, storms, acts of God, acts of government, acts of third parties or other calamity, the Association shall be required to rebuild such Improvements and facilities as quickly as practicable.

B. By the Residential Owners.

1. Living Units and Lots. Except for any items to be Maintained by a Sub-Association (which, if applicable, shall be identified and addressed in the applicable Sub Association Declaration), each Residential Owner shall Maintain his or her Living Unit and all Improvements and personal property upon his or her Lot in good condition at all times. The exterior of all Living Units, including but not limited to roofs, walls, doors, windows, patio areas, pools, screenings, and awnings shall be Maintained in good condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other Living Units, and no excessive rust deposits on the exterior of any Living Unit, peeling of paint or discoloration of same shall be permitted. No Residential Owner shall change the exterior color of his or her Living Unit without the consent of the Approving Party having jurisdiction over such Living Unit). All sidewalks, driveways and parking areas within the Residential Owner's Lot or serving the Residential Owner's Living Unit shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary. All landscaping shall be Maintained by the Residential Owner (or if applicable, any Sub Association obligated by a Sub Association Declaration to maintain any landscaping Improvements) in good condition and appearance and, as reasonably required, mowing, watering, trimming, fertilizing, and weed, insect and

disease control. Underground sprinkler systems may be installed, Maintained and used by a Residential Owner to irrigate all landscaping on the Lot, or any other landscaping which the Residential Owner of the Lot is required to Maintain pursuant to this Section. All landscaped areas shall be primarily grass, and shall not be paved or covered

Maintain pursuant to this Section. All landscaped areas shall be primarily grass, and shall not be paved or covered with gravel or any artificial surface without the prior written consent of the Approving Party having jurisdiction over the subject Living Unit). All dead or diseased sod, plants, shrubs, trees, or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. No artificial grass, plants, or other artificial vegetation shall be placed or Maintained on the exterior of any Lot.

2. Private Drainage Easements. The Residential Owner of a Lot upon which a Private Drainage Easement is located shall Maintain the grass and surface area of that portion of the Lot subject to the Private Drainage Easement, unless a dry detention basin or bio-retention basin is located within the Private Drainage Easement, in which event the Association shall Maintain the surface area of the Private Drainage Easement.

3. Association's Right to Perform Maintenance. If a Residential Owner fails to Maintain his Lot or Living Unit in accordance with this Declaration, the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the Residential Owner, to enter upon the Lot for the purpose of performing the Maintenance and/or repairs described in such notice to the Residential Owner, as applicable. Provided, however, if the Maintenance or repair is necessitated due to an emergency, the Association shall have the right to perform the Maintenance and/ or repairs upon 24 hours advance written notice. The cost of performing such Maintenance and/or repairs and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Residential Owner as an Individual Expense Assessment.

C. Party Walls. Each wall which is built as a part of the original construction of an Attached Unit and placed on the dividing line between Attached Units and all reconstruction or extensions of such walls shall constitute party walls. To the extent not inconsistent with the provisions of Section 6 of Part C of Article 16 and Section 2 of Part D of Article 16, the general rules of law regarding party walls, lateral support, in-below ground construction, and of liability for property damage due to negligence or willful acts or omissions shall apply. Otherwise the provisions of the aforementioned sections of Article 16 of this Declaration shall apply.

ARTICLE X
ARCHITECTURAL CONTROL FOR DETACHED UNITS

A. Establishment. "Committee" shall mean the master architectural control committee, which shall be the governing body charged with promoting and maintaining a high level of design, quality, harmony and conformity consistent with this Declaration, for those Detached Units that are not subject to the jurisdiction of another Approving Party pursuant to a Sub Association Declaration. Living Units that are subject to a Sub Association Declaration in which the rights, responsibilities, obligations and authority described above are delegated to an Approving Party, shall not be subject to the provisions of this Article 10 or to the jurisdiction of the Committee unless and until the members of such Sub-Association elect to amend the subject Sub Association Declaration in order to assign the rights, responsibilities, obligations, and authority of that Approving Party to the Committee.

Until the Termination of Declarant's Architectural Control, referred to below, Declarant shall constitute the Committee, and may approve Plans and Submissions or take other actions on behalf of the Committee in Declarant's own name or in the name of the Committee. After the Termination of Declarant's Architectural Control, the Committee shall be composed of at least three (3) individuals appointed by the Board, each of whom shall be a Residential Owner. The Committee shall act by simple majority vote. In the event of death, resignation or other removal of any Board-appointed member of the Committee, the Board shall appoint a successor member. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration. Declarant shall cease to control and constitute the Committee on the earlier of: (a) the date on which Declarant records in the Registry a document declaring the termination of its control of the Committee, or (b) at such time as Declarant no longer owns a Lot or Living Unit in the Project (which may be referred to in this Declaration as "Termination of Declarant's Architectural Control").

B. Purpose. The Committee is established to provide a system of review for the construction or modification of all Improvements to the Detached Units not otherwise subject to the jurisdiction of another Approving Party pursuant to a Sub Association Declaration. No Improvement shall be commenced, improved or altered, nor shall any grading, to a Sub Association Declaration. No Improvement shall be commenced, improved or altered, nor shall any grading, excavation or change of exterior color or other work which in any way alters the exterior appearance of an Improvement be done to or on such Detached Units without the prior written approval of the Committee.

C. Development Standards. The Committee is empowered to publish or modify from time to time, design and development standards and guidelines for the Detached Units over which the Committee has authority, including, but not limited to, standards for the following ("Standards"): (i) architectural design of Improvements, including, but not limited to, design standards for any Detached Unit or other Improvement constructed upon a Lot; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior appurtenances relating to utility installation; (v) signs and graphics, mailboxes and exterior lighting; (vi) building setbacks, pools and pool decks, side yards and related height, bulk, and design criteria; (vii) pedestrian and bicycle ways, sidewalks and pathways; and (viii) all buildings, landscaping and Improvements on lands owned or controlled by the Association. The Committee may adopt different Standards for each Neighborhood over which the Committee has authority, as long as such Standards are equally applied to all Residential Owners and Detached Units of the applicable Neighborhood. After Termination of Declarant's Architectural Control, a copy of any Standards promulgated by the Committee shall be subject to approval by the Board. After the Board's approval, a copy of the Standards will be made available to all Residential Owners over which the Committee has authority and jurisdiction.

D. Requirement of Committee Approval. No Improvement of any kind shall be erected, placed or maintained on a Detached Unit that is subject to the jurisdiction of the Committee, and no addition, alteration, modification or change to any Improvement on such Detached Units shall be made without the prior written approval of the Committee. For purposes of this Declaration, Declarant Improvements means any Improvement erected, placed, or Maintained with the approval of Declarant, including, without limitation, any building, wall, fence, swimming pool, or screened enclosure, constructed, installed or placed by or with the approval of Declarant prior to the Termination of Declarant's Architectural Control (collectively, "Declarant Improvements"). Declarant Improvements are not subject to the approval of the Committee and are deemed to conform to the plan of development for the Project.

E. Obtaining Committee Approval. In order to obtain the approval of the Committee, a complete set of plans and specifications ("Plans") for proposed Improvements shall be submitted to the Committee for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type and color of materials to be used. The Committee may also require the submission of additional information and materials as may be reasonably necessary for the Committee to evaluate the proposed Improvement or alteration ("Submissions"). The Committee shall have the right to refuse to approve any proposed Plans that, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to each respective Residential Owner submitting same. If the Committee fails to approve or to disapprove in writing any Plans and/or Submissions after: (i) submission to the Committee of the last item of the Plans and Submissions requested by the Committee, so that the Committee has a complete package of all Plans and Submissions requested by the Committee; and (ii) sixty (60) days have elapsed since submission and written request for approval or disapproval was delivered to the Committee by the Residential Owner; then said Plans and Submissions shall be deemed to have been approved by the Committee provided, however, that no Improvement shall be erected or shall be allowed to remain which violates any conditions or restrictions contained in this Declaration, or which violates any applicable zoning or building ordinance or regulation. The approval by the Committee relates only to the aesthetics of the Improvements shown on the Plans and Submissions and not to their sufficiency or adequacy. Each such Residential Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the appropriate Governmental Entities prior to commencement of any construction.

F. Scope of Review. The Committee shall review and approve or disapprove all Plans and Submissions solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability and harmony of location, structure and external design in relation to surrounding topography and structures and the

overall benefit or detriment which would result to the immediate vicinity and to the applicable Neighborhood or the Project as a whole and any other factors deemed relevant to the review by the Committee in its opinion, reasonably exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of

exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of

buildings, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any Plans be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes.

G. Variance from Standards. The Committee may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of the applicable Neighborhood or the Project as a whole, variances from compliance with any Standards which it has promulgated pursuant to its authority when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to that particular property and particular provision hereof or Standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing.

H. Enforcement. There is specifically reserved unto the Committee the right of entry and inspection upon any Living Unit or other portion of the Project Land for the purpose of determination by the Committee whether there exists any Improvement which violates the terms of any approval by the Committee or the terms of this Declaration. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder should be made only upon reasonable notice given to the Residential Owner of record at least twenty-four (24) hours in advance of such entry. The Association, acting pursuant to the direction of the Committee, 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 Improvement, or to remove any unapproved Improvements, the prevailing party in such litigation shall be entitled to recover all Legal Fees incurred in connection therewith. The Association shall indemnify and hold harmless any member of the Committee from all costs, expenses and liabilities, including attorneys fees incurred by virtue of any member's service as a member of the Committee, provided such member acted in good faith and without malice.

I. Subcommittees and Delegation of Authority. The Committee may establish subcommittees for the purpose of acting on behalf of the Committee with respect to similar circumstances, situations, or types of Improvements, such as a swimming pool subcommittee or a subcommittee which would deal with modifications of existing Improvements or additional new Improvements ancillary to an existing Detached Unit, in contrast to the construction of initial Improvements upon a previously unimproved Lot. All rights and powers of the Committee may be delegated to such subcommittee with regard to the subject matter of the subcommittee. The rights and powers of the Committee may be assigned to a management company, an architect, design professional or other entity, or any portion of such rights and powers applicable to a particular subcommittee or area of similar circumstance.

ARTICLE 11
USE RESTRICTIONS

For purposes of this Article 11, unless the context otherwise requires, Residential Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Residential Owner, and any other permitted occupants of a Living Unit. In addition to any other restrictions set forth in this Declaration and in any applicable Sub Association Declaration, all the Living Units shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant as provided in this Article and elsewhere in this Declaration.

A. Residential Use. The Lots and Living Units shall be for single-family residential use only. No trade, business, profession or commercial occupation or activity may be carried on in the Project without the consent of the Board except for such occupation or activity permitted to be carried on by Declarant or as is expressly permitted below.

In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Project.

B. Non-Residential Activities or Uses. No trade, business, profession or commercial activity, or any other non residential use shall be conducted on the Project Land or within any Living Unit without the consent of the Board except that a Residential Owner or occupant residing in a Living Unit may conduct business activities within the Living Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Living Unit; (ii) the business activity conforms to all zoning requirements for the Project Land, and all applicable permits and approvals required by the Governmental Entities for the particular business use or activity have been procured and are current; (iii) the business activity does not involve door-to-door solicitation of residents noticeably greater than that which is typical of Living Units in which no business activity is being conducted; (iv) the business activity is consistent with the character of the Project, and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, and (v) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is beyond the level of traffic and vehicular parking that occurs in residential developments similar to the Project, as the Board determines in its sole discretion. The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any three-month period and, when held, may not exceed two (2) consecutive days in duration. The foregoing shall not prohibit a Residential Owner from leasing his Living Unit.

C. Nuisances. No obnoxious or offensive activity shall be carried on about the Living Units or in or about any Improvements, or on any portion of the Project Land, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Residential Owner. No use or practice shall be allowed in or around the Living Units which is a source of annoyance to Residential Owners or occupants of Living Units or which interferes with the peaceful possession or proper use of the Living Units or the surrounding areas. No loud noises or noxious odors shall be permitted to be made on any portion of the Project Land, except for typical noises and odors associated with the initial construction of a Living Unit or other Improvements being installed by Declarant.

D. Outside Storage of Personal Property. The personal property of any Residential Owner shall be kept inside the Residential Owner's Living Unit or a fenced-in yard (and only inside fences not in violation of the provisions of this Declaration or a Sub Association Declaration), except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good conditions. The Residential Owners of Attached Units may be subject to additional or more stringent restrictions regarding outside storage of personal property as provided in the Sub Association Declaration applicable to such Attached Units.

E. Parking and Vehicular Restrictions. Except for the parking of vehicles in any common parking areas or spaces located on any Association Property or Sub Association Property, vehicles belonging to Residential Owner or a member of the Residential Owner's family household may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than 2 vehicles. Any driveway or parking pad constructed upon any Lot shall have either an asphaltic concrete surface, a cement concrete surface, or brick pavers. Parking areas within any Sub Association Property shall be restricted and used as provided in the applicable Sub Association Declaration and shall not used by any Residential Owners who are not members of the applicable Sub-Association, except pursuant to the easement set forth in section B.9 of Article 8 and except as a guest or invitee of a member of the Sub Association.

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), or commercial vehicle of any kind shall be parked on the street within the Development, nor shall any such vehicle be parked or kept on any Lot. Furthermore, no boat or boat trailer shall be parked on the street within the Development, nor shall any such vehicles be parked or kept on any Lot

unless kept within a garage or other enclosed structure approved by the applicable Approving Party so as not to be visible from the street or the adjoining Living Units. No tractor trailer trucks or cabs shall be parked on any street or Lot within the Project.

the Project.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Project or any open space and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

F. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Living Unit or Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Residential Owner or occupant of the Project. Residential Owners shall observe and obey all valid laws, zoning ordinances and regulations of all Governmental Entities. Violations of laws, orders, rules, regulations or requirements of any Governmental Entity, relating to any Living Unit or Lot shall be corrected by, and at the sole expense of the Residential Owner of the Living Unit or Lot.

G. Trash and Other Materials. Each Residential Owner shall regularly pick up all garbage, trash, refuse or rubbish on his Lot, and no Residential Owner or resident shall place or dump any garbage, trash, refuse, rubbish or other materials on any other portions of the Project Land. Garbage, trash, refuse or rubbish that is required to be placed at the front of a Lot in order to be collected may be placed and kept at the front of the Lot after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a Living Unit or fenced-in area (and only inside fences not in violation of the provisions of this Declaration or a Sub Association Declaration), or with respect to Detached Units only in the rear yard of a Lot, and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted. Residential Owners of Attached Units may be subject to additional restrictions regarding trash removal and storage in accordance with the applicable Sub Association Declaration for the Neighborhood in which such Residential Owners reside.

H. Leases. No portion of a Living Unit (other than an entire Living Unit) may be rented. All leases must be in writing and shall provide that the Association and any applicable Sub Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, any applicable Sub Association Declaration, the applicable rules and regulations, or any of the Association Documents or the Governing Documents referred to in Section 1(o), Part A of Article 16. No lease shall be for a period of less than six (6) months without the approval of the Board (or the board of directors of the applicable Sub Association, if any). A copy of the proposed lease must be delivered to the Association (or to the applicable Sub Association, if any) prior to occupancy by the tenant. The Residential Owner of a leased Living Unit shall be jointly and severally liable with his tenant to the Association and to any applicable Sub Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association or the applicable Sub Association, if any, whether before or after such lease was entered into.

I. Temporary Buildings; Accessory Buildings; Play Structures. No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed upon the Project Land except in connection with construction, development, leasing or sales activities permitted by the Committee or performed by Declarant. No temporary structure may be used as a Living Unit. No garden shed, storage shed, out-building, play structure, or other permanent structures which are detached from the Living Unit shall be constructed or placed upon the Detached Units unless approved by the Committee. Residential Owners of Attached Units may be subject to additional restrictions regarding buildings and structures that are detached from the Living Unit (including, if applicable, the complete prohibition of any such structures) in accordance with the applicable Sub Association Declaration for the Neighborhood in which such Attached Units are located.

J. Garages. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a

living space or storage space and no garage opening shall have a screen covering without the consent of the Approving Party. The foregoing shall not include any garages used or formerly used by Declarant as an office or other area in connection with the sale of Living Units, which are Declarant Improvements and not subject to the restrictions in this connection with the sale of Living Units, which are Declarant Improvements and not subject to the restrictions in this Article 11. All garage doors shall remain closed when vehicles or Persons are not entering or leaving the garage.

K. Animals and Pets. Only common domesticated household pets may be kept on any Lot or in a Living Unit, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, or bred on any portion of the Project Land. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. The Board shall have the right to forbid or prohibit certain breeds or types of animals. Any pet must not be an unreasonable nuisance or annoyance to other residents on the Project Land. The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Declaration including rules requiring that all animals be kept on a leash when on the Association Property or outside a fenced yard and that animals be restricted to designated areas within the Association Property and that Residential Owners are responsible for cleaning up any mess that a pet created within any Lot or the Association Property. The Board may require any pet to be immediately and permanently removed from the Project due to a violation of this Section. Each Residential Owner who keeps or intends to keep a pet agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from he or she having any animal on the Project Land.

L. Additions and Alterations. No Living Unit shall be enlarged by any addition thereto or to any part thereof, and no Residential Owner shall make any Improvement, addition, or alteration to the exterior of his Living Unit, including, without limitation, the painting, staining, or varnishing of the exterior of the Living Unit or re-roofing with shingles of a different color or material, without the prior written approval of the applicable Approving Party.

M. Increase in Insurance Rates. No Residential Owner may engage in any action that may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Project Land not owned by such Residential Owner.

N. Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. No air-conditioning or heating apparatus, unit or equipment shall be installed on the ground in front of, or attached to, any front wall of any Living Unit.

O. Clotheslines and outside Clothes Drying. No clotheslines or clothespoles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by Governmental Entities for energy conservation purposes, in which event the applicable Approving Party shall have the right to approve the portions of any Lot used for outdoor clothes-drying purposes and the types of devices to be employed, which approval must be in writing

P. Outside Antennas and Satellite Dishes. No Residential Owner may erect, place or keep a television or radio receiving or transmitting antenna, satellite dish or similar apparatus or equipment unless: (i) such apparatus is 30" or less in diameter and height, (ii) the apparatus is screened from public view and located behind the Living Unit either in the rear yard or affixed to the rear roof, (iii) the apparatus is not visible while standing at any point along the property boundary line in front of the house that abuts or is adjacent to a street, right-of-way or sidewalk, and (iv) the authorized Approving Party has approved the apparatus, its location and the type of screening.

Q. Flagpoles. With the exception of the proper display of the United States flag of a size no greater than four feet (4') by six feet (6') according to the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, no Residential Owner may erect or install a flagpole or decorative banner on any portion of a Lot or Living Unit, including freestanding detached flagpoles or banners, and those that are attached to a Living Unit, without the prior written approval of the authorized Approving Party.

R. Oil & Gas Tanks, Pool Equipment. All oil tanks, bottled gas tanks (other than portable propane tanks for gas grills), all permanently affixed swimming pool equipment and housing, and similar apparatuses shall be underground or placed in walled-in or landscaped areas (unless prohibited or restricted by a Sub Association Declaration) as approved

or placed in walled-in or landscaped areas (unless prohibited or restricted by a Sub Association Declaration) as approved by the authorized Approving Party so that they shall be substantially concealed or hidden from any eye-level view from any street or adjacent property.

S. Signs. Except as otherwise required by the City and except for political signs in conformance with the requirements of this Section, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant to advertise Living Units for sale during the construction and sales period, and one sign of not more than six (6) square feet advertising the property for sale. No signs advertising a Living Unit "for rent" or "for lease" shall be permitted within the Project without the prior written consent of Declarant (until the Termination of Declarant's Architectural Control) and the authorized Approving Party.

No Residential Owner shall be permitted to install any signs on or in the following: (i) the Association Property or the Sub Association Property, (ii) within the right-of-way of any Residential Street, or (iii) on any other portion of the Project located outside the boundaries of such Residential Owner's Lot.

Notwithstanding the foregoing, political signs or signs intended to influence the outcome of any election may be displayed no earlier than 45 days prior to the subject election, and no later than seven (7) days after the subject election. The number and size of such signs shall be in compliance with all local ordinances regulating such signs or, in the absence of any such ordinance, shall be limited to one (1) such sign with maximum dimensions of 24" by 24".

T. Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after a Residential Owner or tenant first moves into a Living Unit or when permanent window treatments are being cleaned or repaired.

U. Ponds. The rules and regulations of the Association, as published and amended from time to time, may contain rules, regulations and requirements concerning the use of the Ponds and any open space or other areas surrounding the Ponds, which shall be in addition to any provisions of this Declaration. There shall be no swimming, use of personal flotation devices, or boating of any type (whether powered or not) on the Ponds. No Residential Owner shall construct or install any piers or docks on any portion of the Ponds, or on any portion of a Lot which abuts a Pond, provided, however, that the Declarant or the Association may construct a pier, dock, or fountain on, in, or adjacent to a Pond for the use and enjoyment of the Residential Owners and their family members, guests and invitees. No Residential Owner shall be permitted to use water from the Ponds for irrigation or for any other purpose whatsoever. Declarant and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the Ponds.

V. Swimming Pools. No swimming pools, spas, or the like, shall be installed on a Lot with a Detached Unit without the consent of the authorized Approving Party. No above-ground swimming pools shall be permitted in the Project, except that small, inflatable wading pools shall be permitted on a temporary basis. A Sub Association Declaration may contain additional or more stringent restrictions on the use or installation of swimming pools.

W. Fences and Walls. No fence shall be permitted to be installed upon any Lot, unless such proposed fence has been approved by the authorized Approving Party. Nothing in this Section shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots, nor shall anything in this Section apply to any fence installed by the Declarant at any entrance to or along any street within the Project.

No fences shall be installed on any Lot on which an Attached Unit is constructed or located, except as may be permitted by the provisions of the applicable Sub Association Declaration.

X. Mailboxes. No mailboxes are permitted without the consent of the authorized Approving Party, except that mailboxes which are identical to mailboxes originally provided by Declarant are permitted for the Detached Units. Mailboxes are not permitted on any Lot upon which an Attached Unit is constructed or located.

Mailboxes are not permitted on any Lot upon which an Attached Unit is constructed or located.

Y. Surface Water Management. No Residential Owner or any other person shall do anything to adversely affect the Project Drainage System and the general surface water management and drainage of the Project Land, without the prior written approval of the applicable Approving Party and any controlling Governmental Entity, including, but not limited to, the excavation or filling in of any Lot. Provided, however, the foregoing shall not be deemed to prohibit or restrict the initial construction of Improvements upon the Project Land by Declarant in accordance with permits issued by the applicable Governmental Entities. In particular, no Residential Owner shall install any landscaping or place any fill on the Residential Owner's Lot which would adversely affect the drainage of any contiguous Living Unit or Lot. No Residential Owner shall be permitted to reshape or alter the topographical features or area within any drainage easement, nor shall any Residential Owner be permitted to install fences or other Improvements or structures within a drainage easement, including the installation of landscaping, plants, trees or other vegetation, except for low growing grass. The application of herbicide to the portions of the Project Land within any drainage easement is prohibited.

Z. Wetland Areas. No Residential Owner shall remove native vegetation that becomes established within any wetland areas located on or adjacent to any portion of the Project Land. Removal includes dredging, the application of herbicide, and cutting. No Residential Owner shall add or introduce additional vegetation or other forms of plant life or landscaping within any wetland areas located on or adjacent to any portion of the Project Land. Residential Owners should address any question regarding authorized activities within any wetland areas to the applicable Governmental Entities. No Residential Owner may construct or keep any building, residence, or structure, or undertake or perform any activity in any wetland areas without the prior approval of the Association and the applicable Governmental Entities and utility providers.

AA. Building Location. Any Living Unit erected on a Lot other than a corner Lot shall face the street on which the Lot abuts. On corner Lots, a Living Unit may be erected so as to face the intersection of the streets on which the Lot abuts.

BB. Damage and Destruction. If any Living Unit or other Improvement on a Lot is damaged or destroyed by casualty or for any other reason, the Residential Owner of the Lot shall repair and restore the damaged Improvement as soon as is reasonably practical to the same condition that the Improvement was in prior to such damage or destruction, unless otherwise approved by the applicable Approving Party.

CC. Subdivision and Partition. No Lot shall be subdivided without the Committee's prior written consent except by Declarant. Although a Lot within the Project may appear to contain enough land area to permit construction of additional Living Units, because of the approval of the Project as a cluster unit development, prior approved density transfers may, in fact, preclude City approval of additional Living Units. No Lot within the Project may be subdivided by sale or otherwise so as to reduce the total lot area shown on the Final Plat, except by and with the consent of Declarant and, if required, the approval of the City.

DD. Construction. All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed Living Unit or other Improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Residential Owner of a Living Unit shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on such Residential Owner's Living Unit.

EE. Septic Tanks; Wells. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the Living Unit, which mains furnish domestic water

from sources beyond the boundaries of the Lot. No Residential Owner shall be permitted to use water from the Ponds for irrigation or for any other purpose whatsoever.

FF. Additional Neighborhood Restrictions. Any Sub Association Declaration encumbering a Neighborhood may contain additional restrictions or more stringent restrictions than those set forth in this Declaration. A Sub Association Declaration shall contain restrictions and covenants that are intended to preserve the particular design and character of the Neighborhood and the Living Units therein, and may be more but not less, restrictive than the restrictions in this Declaration. If there is any conflict between the terms of this Article 11 and the applicable use restrictions contained within a Sub Association Declaration, the Sub Association Declaration shall control as to the Living Units in the subject Neighborhood.

GG. Non-applicability to Declarant. The provisions, restrictions, terms and conditions of this Article 11 shall not apply to Declarant.

HH. Additional Restrictions in Article 16. Part A of Article 16 may contain additional restrictions that are not otherwise reflected in this Article 11. All Residential Owners should refer to Part A of Article 16 for a description of any additional restrictions.

ARTICLE 12
ADDITONAL LAND; WITHDRAWAL; BOUNDARY ADJUSTMENTS

A. Additional Land. Prior to the Turnover Date, Declarant shall have the right, without the approval or joinder of the Association, the Residential Owners or any other Person (except if required in accordance with any specific provision of this Declaration or the City Code), to bring under the provisions of this Declaration and thereby add to the Project, the real property described on Exhibit B and any other real property owned or acquired by the Declarant and which is contiguous to the Project Land or which is contiguous to a private or public street adjacent to the Project Land (all of which is herein referred to as "Additional Land"), provided that the annexation of such Additional Land is consistent with the Master Plan or is for the purposes of reflecting changes or modifications to the Master Plan which have been approved by the City and other applicable Governmental Entities, by recording a supplemental declaration or Annexation Declaration ("Supplement"). The Supplement 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 Additional Land being subjected to this Declaration and as are not inconsistent with the general scheme of this Declaration, including the right to grant or reserve easements for the benefit of such Additional Land. To the extent that any Additional Land is made part of the Project, reference herein to the Project Land shall be deemed to include such Additional Land. Declarant is not obligated to add to the Project or, except as required by the City, to develop any Additional Land under a common scheme, or be prohibited from changing development plans with respect to future portions of the Project comprised of any Additional Land. All Residential Owners, by acceptance of a deed to their Living Units, consent to any change, rezoning or addition made by Declarant and shall evidence such consent in writing if requested to do so by Declarant at any time without obviating the effect of this provision.

After the Turnover Date, upon the vote or written consent of seventy five percent (75%) of the votes held by the Members of the Association, any real property which is contiguous to the Project Land or which is contiguous with a public or private street adjacent to the Project Land may be brought under the provisions of this Declaration and thereby added to the Project, provided that the annexation of such real property is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the Planning Director of the City. To the extent that any contiguous property approved for annexation by the Members after the Turnover Date is thereafter made part of the Project, reference herein to the Project Land shall be deemed to include such property.

B. Association Property within Additional Land. If any Additional Land is subjected to this Declaration as permitted by this Declaration, any Association Property located within such newly annexed portion of the Project Land shall be conveyed to the Association as provided in Article 4 and in Article 16.

C. HUD/VA Approval. If prior to the Turnover Date, the Project is subject to any requirements of VA, FHA, the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency that insures, guaranties, or purchases mortgages, and such requirements provide that the annexation of any Additional Land insures, guaranties, or purchases mortgages, and such requirements provide that the annexation of any Additional Land is subject to the approval of such agency, then the annexation of any such Additional Land will require the prior approval of such agency.

D. Withdrawal. Prior to the Turnover Date, Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any Person (except if applicable, in accordance with Section N of Article 15, the consent of the City) for the purpose of removing certain portions of the Project Land then owned by Declarant from the provisions of this Declaration to the extent that such real property was included originally in error, or as a result of changes in the Master Plan for the Project approved by the City. City approval shall be evidenced by the signature of the Raleigh City Attorney or his or her deputy on the recorded original or copy of the withdrawal instrument,

E. Additional Requirements in Article 16. Section 13 of Part A of Article 16 and Section 4 of Part C of Article 16 contain additional requirements regarding the subjection of Additional Land to the terms of this Declaration that are not otherwise reflected in this Article 12. All Residential Owners and Persons wishing to subject Additional Land to this Declaration should refer to those sections of Article 16 for a description of any additional requirements.

ARTICLE 13
ENFORCEMENT; NON-MONETARY DEFAULTS; ASSOCIATION REMEDIES

A. Enforcement. The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any portion of the Project Land), the Association, any Residential Owner, and any Institutional Mortgagee holding a mortgage on any portion of the Project Land, in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief, against any Person violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees. All rights, remedies and privileges granted to the parties entitled to enforce the covenants, restrictions and provisions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude a party entitled to enforce the provisions of this Declaration from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

B. Non-Monetary Defaults of Residential Owners. In the event of a violation of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association by any Residential Owner or any tenant of a Residential Owner, or any person residing with them, or their guests or invitees (other than the non-payment of any Assessment or other monies), the Association shall notify the Residential Owner and any tenant of the Residential Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Residential Owner or tenant fails to commence a cure within seven (7) days after written notice by the Association and thereafter diligently proceed to completely cure such violation as soon as practicable, or if any similar violation is thereafter repeated, the Association may, at its option:

1. After notice and an opportunity for a hearing, impose a fine against the Residential Owner or tenant as provided in this Article; and/or

2. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

3. Commence an action to recover damages; and/or

4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any Maintenance required to be performed by this Declaration.

4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any Maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, shall be assessed against the applicable Residential Owner as an Individual Expense Assessment. The Association shall have the lien for any such Individual Expense Assessment and any associated Interest, costs or expenses, including Legal Fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the filing of a claim of lien as provided in Section B of Article 6 hereof.

C. Fines. The amount of any fine shall be determined by the Board, and shall not exceed any amount permitted by applicable law, if any. Prior to imposing any fine, the Residential Owner and, if applicable, tenant shall be afforded an opportunity for a hearing after reasonable notice to the Residential Owner and tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, (iii) a short and plain statement of the matters asserted by the Association; and (iv) a statement that a fine may be imposed. The Residential Owner of a leased Living Unit shall have the right to participate in any hearing involving the tenant of such Living Unit, and the Association shall provide notice to the Residential Owner of such Living Unit concurrently with the Association's notice to the tenant of the subject Living Unit. The Residential Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Residential Owner or tenant. If the Residential Owner or tenant fails to attend the hearing as set by the Board, the Residential Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Residential Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against a Residential Owner shall be deemed an Individual Expense Assessment and, if not paid when due, all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, if permitted by applicable law, the Association shall have the right to evict the tenant as provided in Section F below.

D. Negligence. A Residential Owner shall be liable and may be assessed by the Association for the expense of any Maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Living Unit or the Association Property.

E. Responsibility for Occupants, Tenants, Guests, and Invitees. Each Residential Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Living Unit, and for all guests and invitees of the Residential Owner or any such resident and, if the acts or omissions of any of the foregoing shall result in any damage to the Association Property, or any liability to the Association, the Residential Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Articles, or the Bylaws, by any resident of any Living Unit, or any guest or invitee of a

Residential Owner or any resident of a Living Unit, shall also be deemed a violation by the Residential Owner, and shall subject the Residential Owner to the same liability as if the violation was that of the Residential Owner.

F. Eviction of Tenants, Occupants, Guests, and Invitees. To the extent permitted by applicable law, if any tenant or any person present in any Living Unit other than a Residential Owner and the members of his immediate family permanently residing in the Living Unit, shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to other residents of the Project, or shall willfully damage or destroy any Association Property or Limited Association Property, or personal property of the Association, then upon written notice by the Association such Person shall be required to immediately leave the Project. If such person does not immediately leave the Project, the Association is authorized to commence an action to evict such tenant or compel the Person to leave the Project and, where necessary, to enjoin such person from returning, provided such actions are permitted by applicable law. The expense of any such action, including Legal Fees, may be assessed against the applicable Residential Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have the same lien rights as for other Assessments provided for herein. The foregoing remedy, if permitted by applicable law, shall be in addition to any other remedy of the Association. The Association shall provide notice to the Residential Owner of a leased Living Unit concurrently with any notices sent to the tenant of such Living Unit pursuant to this Section, and such Residential Owner shall have the right to participate in any hearings or eviction proceedings involving the tenant of such Residential Owner's Living Unit. The right of eviction provided for in this Section shall be inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein. Notwithstanding the foregoing, the Association's rights granted by this Section are expressly subject to the provisions of all applicable law and as such, may not be enforceable or may be invalidated according to such law.

G. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

H. Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

ARTICLE 14
AMENDMENT

The process of amending or modifying this Declaration shall be as follows:

A. Prior to Turnover Date. Until the Turnover Date and except as specifically provided otherwise in this Declaration, only Declarant may amend this Declaration, which amendment can be made without the approval of any Member provided the amendment does not materially alter or change any Residential Owner's right to the use and enjoyment of such Residential Owner's Lot or Living Unit, or of the Association Property as set forth in this Declaration, and the amendment does not adversely affect the title to any Living Unit. Any Declarant amendment authorized by this Section A, Article 14, shall be subject to Section 4, Part A, Article 16.

B. After the Turnover Date. After the Turnover Date, and except for the annexation of Additional Land which shall be accomplished pursuant to the provisions of Article 12 (and to the extent not otherwise addressed in Article 12, the provisions of Section 13 of Part A of Article 16), this Declaration may be amended by: (i) the consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association as such classes are set forth in the Association Documents (provided that the percentage of votes attributable to the Class A Members shall not be less than the prescribed percentage (if any) of affirmative votes attributable to the Owners as specified by the Planned Community Act); (ii) the approval or ratification of a majority of the Board, and (iii) if required as provided elsewhere in this

Declaration, the approval of the City. Approval of the City, if required, shall be evidenced as required by the provisions of Section 4 of Part A of Article 16. The aforementioned consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association may be evidenced by a writing signed by the required number of Members (in lieu

class of Members of the Association may be evidenced by a writing signed by the required number of Members (in lieu of a meeting) or by the affirmative vote of the required number of Members at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

C. Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent by the Owners or any other Person.

D. Amendments to Declarant's Rights. No amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association, the City, or of any Institutional Mortgagee under the Association Documents without the specific written approval of such party affected thereby. Furthermore, no amendment to this Declaration shall be effective which would prejudice the rights of a then-Residential Owner or his family members, guests, invitees and lessees to utilize or enjoy the benefits of the then existing Association Property unless the Residential Owner or Residential Owners so affected consent to such amendment in writing. No amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section F of Article 15 and any such amendment shall be deemed to impair and prejudice the rights of Declarant hereunder.

E. FHA/VA Approval Prior to Turnover Date. As long as the "Class B" membership exists, and except for amendments permitted to be made by Declarant as provided herein, if the Project is subject to any requirements of the Veteran's Administration ("VA"), the Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, and such requirements make any material amendments of this Declaration subject to such agency's approval, a material amendment of this Declaration will require the prior approval of such agency.

F. Certification and Recording of Amendments. A true copy of any amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Project Land and requesting such notice. The amendment shall become effective upon the recording in the Registry of a Certificate of Amendment to this Declaration setting forth the amendment.

G. Amendments to Satisfy Lending Requirements. Declarant may, without the consent of any Residential Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its planned unit development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any of Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by FHA.

H. Boundary Adjustments. While Declarant owns any Lot, Declarant reserves the right to make minor boundary adjustments between the Lots owned by Declarant and the Association Property without the consent or approval of any other Person except the City as may be required by City Code, provided that any such adjustment will not materially decrease the acreage of the Association Property and, if required in order to eliminate any conflict with the Master Plan as a result of such adjustment, will be reflected by a modification of the Master Plan approved by the Planning Director of the City. If such amendment is to be made following the conveyance of the subject Association Property to the Association, the Association is obligated to sign any plats, deeds, or other instruments or forms necessary to accomplish any of the actions that Declarant is permitted to take in accordance with this Section.

ARTICLE 15
GENERAL PROVISIONS

A. Conflict with Other Association Documents. In the event of any conflict between the provisions hereof and the provisions of the Articles, Bylaws, and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

B. Notices. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, first class, postage prepaid, to: (i) any Residential Owner, at the address of the person whose name appears as the Residential Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Living Unit owned by such Residential Owner; and (ii) the Association, certified mail, return receipt requested, at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612, or such other address as the Association shall hereinafter notify Declarant and the Residential Owners of in writing; (iii) Declarant, certified mail, return receipt requested, at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Residential Owners.

C. Captions, Headings and Titles. Article and Section captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter of the terms and provisions of this Declaration.

D. Context. Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

E. Severability. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. If any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

F. Certain Rights of Declarant. Improvements constructed or installed by Declarant shall not be subject to the approval of the Association or the Committee. During the period that Improvements constructed by Declarant are owned by Declarant, Declarant's Improvements shall not be subject to the provisions and requirements of this Declaration. Declarant reserves the right for Declarant and its nominees to enter into and transact on the Project Land any business necessary to consummate the sale, lease or encumbrance of Lots and Living Units or real property including, but not limited to, the right to maintain models and a sales and/or leasing office, place signs, employ sales and leasing personnel, use the Association Property and show Living Units. Declarant reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Project Land, and its nominees may exercise the foregoing rights applicable to each without notifying the Association. Any such models, sales and/or leasing office, signs and any other items pertaining to such sales or leasing efforts shall not be considered a part of the Association Property and shall remain the property of Declarant or its nominees, as applicable. This Section may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to

acquire or construct Improvements upon the Project Land or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Project Land as a result of the foreclosure of any mortgage encumbering any portion of the Project Land securing any such loan to Declarant or acquires title thereto by deed in lieu of foreclosure. portion of the Project Land securing any such loan to Declarant or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Association Documents, shall terminate upon Declarant no longer owning any portion of the Project Land (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of such party's voluntary election to relinquish the aforesaid rights and privileges.

G. Association's Indemnification. The Association covenants and agrees that it will indemnify and save harmless Declarant and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Project Land or the appurtenances thereto, from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association. The indemnification provisions of this Section shall not apply to any expenses which may be incurred by Declarant to avoid the performance of any of the obligations to be kept and performed by Declarant, or any liability which may be incurred by a Residential Owner as a result of ownership of a Lot or a Living Unit.

H. Disputes as to Use. In the event there is any dispute as to whether the use of the property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Any use by Declarant of the Project Land or any parts thereof shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

I. Delegation. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for Maintenance, operation and administration, as provided herein, to any management company or entity selected by the Board from time to time and whether or not related to Declarant. The fees or costs of this or any other management company so retained shall be deemed to be part of the Operating Expenses hereunder. All contracts with management companies shall contain a provision that allows the Association to unilaterally terminate the contract without cause after ninety (90) days notice.

J. Term. This Declaration shall run with and bind the Project Land and inure to the benefit of Declarant, the Association, the Residential Owners, and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded in the Registry, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of any applicable term in effect, an instrument agreeing to terminate this Declaration signed by Residential Owners owning at least eighty percent (80%) of the Living Units (or such higher percentage (if any) of Residential Owners required by the applicable provisions of the Planned Community Act or the Raleigh City Code), is recorded in the Registry, whereupon this Declaration shall be terminated upon the expiration of the applicable term in effect at the time.

K. Rights of Mortgagees.

1. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Association Documents and the books, records and financial statements of the Association to Residential Owners and the Institutional Mortgagees. In addition, evidence of insurance

shall be issued to each Residential Owner and mortgagee holding a mortgage encumbering a Living Unit or Lot upon written request to the Association.

2. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot or a Living Unit and the legal description of such Lot the Association shall provide such Listed Mortgagee with timely written notice of the following:

i. Any condemnation, loss or casualty loss which affects any material portion of the Association Property;

ii. Any lapse, cancellation or material modification of any insurance policy or fidelity bond of the Association;

iii. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Living Unit or Lot; and

iv. Any failure by a Residential Owner owning a Living Unit encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Association Documents, where such failure has continued for a period of sixty (60) days.

3. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to receive financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

L. Approval of Association Lawsuits by Residential Owners. The Association shall be required to obtain the approval of Members holding at least three-fourths (3/4) of the total votes of the Association (at a duly called meeting of the Members at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

1. the collection of Assessments;

2. the collection of other charges which Residential Owners are obligated to pay pursuant to the Association Documents;

3. the enforcement of the use and occupancy restrictions contained in the Association Documents;

4. in an emergency where waiting to obtain the approval of the Residential Owners creates a substantial risk of irreparable injury to the Association Property or to Residential Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the total votes of the Association);

5. filing a compulsory counterclaim; or

6. termination of employment relationship or enforcement of a contract.

M. Rights and Requirements of Governmental Entities. Any Governmental Entity or agency, including, but not limited to the City and the County, their agents, and employees, shall have the right of immediate access to the Project Land at all times if necessary for the preservation of public health, safety and welfare. Should the Association or its Board fail to Maintain the Association Property in accordance with the specifications set forth in the applicable governmental approvals for the Project for an unreasonable time, not to exceed ninety (90) days after written request to do so, the City, County and any other applicable Governmental Entity, by and through the affirmative and official action of the governing body, shall have the same right (but not the obligation), power and authority as is herein given to the Association and its Board to enforce this Declaration and levy Assessments necessary to Maintain the Association Property. In such event, the applicable governing body may elect to exercise the rights and powers of the Association or its Board, to the extent necessary to take any action required that the Association might have taken, or levy an Assessment that the Association may have levied, either in the name of the Association or otherwise, to cover the cost of

Maintenance of any Association Property. The rights granted herein shall be supplemental to any governmental authority the City or County may have, and application of this provision shall not diminish, limit, or restrict the right of the City or County to apply any other legal rights it may have.

County to apply any other legal rights it may have.

N. City Approval of Certain Actions. Notwithstanding anything contained elsewhere in the Association Documents to the contrary, the following actions shall require the prior written approval of the City (which may act by or through the City Planning Director or the City Attorney or his/her Deputy) before being implemented or effective:

1. The annexation of any Additional Land to the provisions of this Declaration;

2. The withdrawal of any land from the provisions of this Declaration; or

3. The amendment of this Declaration, except for amendments permitted by Sections A, C and G of Article 14.

4. The exchange of land. See Section 1(b), Part C, Article 16.

ARTICLE 16
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 to (those two terms being used interchangeably herein) 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 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 Associatin 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 limprovement 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

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 Centex Homes, a Nevada general partnership, and 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 December 31, 2012 . 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 approximately 181 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

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 $585.00. 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

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

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

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. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the 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. Except for water and sewer lines, pump stations and force mains owned and Maintained by a Sub Association or the City, 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.
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 installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a Sub-Association as Sub-Association Common Area or Sub-Association Limited Common Area) in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Properties so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City. The expenses for Maintenance of Stormwater Control Measures by the Association shall be Common Expenses (or, if applicable, Limited Common Expenses). Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

Section 2. Creation of Stormwater Assessments. 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 covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, 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 covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2007, the Stormwater Assessment is $116.08 per year for each Living Unit. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment

owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line

a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other 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 Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

Each Stormwater Assessment, 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 the Owner of the Lot at the time when the Stormwater Assessment first became due and payable. If more than one Person held an ownership interest in the Lot at the time the Stormwater Assessment first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments 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 amount due is paid.

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

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

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

(b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Governing Documents, or in the Stormwater Agreement in connection with the Stormwater Control Measures; and

(c) payments to the City pursuant to the Stormwater Agreement.

Section 4. Assignment of Collection Rights and Lien Rights the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to

file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies

right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies

owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

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

Section 6. Annexation of Additional Property. 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 7. 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

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 8. 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 9. 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)

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

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

(a) 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.

(b) 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;

(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.

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

(d) 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".

(e) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members who have 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. Residential Density Transfers. The Properties are developed as a cluster unit development approved by the City. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of Lots.

Section 3. Development Rights. Development rights retained by the Declarant as special Declarant rights, including the right to add real estate to the cluster unit development, to add dwelling units, to add Common Areas, to change dwelling unit types within the cluster, or to reallocate units within the cluster, as well as all conditions and limitations applied to the exercise of any such development rights, are described in other Articles and Sections of this Declaration. Exercise of any of the development rights described in this Section is subject to the prior approval of the City.

Section 4. Addition of Land. The maximum amount of land that can be added to the cluster unit development is as follows: 261.344 acres. (The maximum amount of land that can be added to the cluster unit development without amending the Master Plan is 166.44 acres.)

Section 5. Number of Dwelling Units. The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development, or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification for additional dwelling units, are as follows (for purposes of this Section, the cluster unit development includes all portions of the Properties initially subjected to this Declaration that are part of the cluster unit development, together with all Annexed Property that becomes subject to this Declaration and is part of the cluster unit development):

(a) maximum number of dwelling units allowed in the cluster unit development is 2,110.

(b) maximum number of dwelling units per acre allowed in the cluster unit development is six (6) dwelling unit per

(b) maximum number of dwelling units per acre allowed in the cluster unit development is six (6) dwelling unit per
acre.

Section 6. 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

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 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), 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

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

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

PART F
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 applicable Sub 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.

[Signature appears on next page]

BK012375PG00064

IN WITNESS WHEREOF, Declarant has signed this Declaration on the date set forth below.

DECLARANT:

DECLARANT:
CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation
Its: Managing General Partner

By: _____
W. Hampton Pitts
Division President

(SEAL)

Date: 1/23/07

STATE OF NORTH CAROLINA §
COUNTY OF WAKE

The foregoing instrument was acknowledged before me, this 23rd day of January, 2007, by W. Hampton Pitts, Division President of Centex Real Estate Corporation, a Nevada corporation, the Managing General Partner of Centex Homes, a Nevada general partnership.

MEGAN L. FARRIS NOTARY PUBLIC WAKE COUNTY, N.C. (SEAL)

_____
Notary Public for Wake County
My Commission Expires 4-19-2009.

BK012375PG00065

EXHIBIT "A"

EXHIBIT "A"

Legal Description of the Project Land

LYING and being in the City of Raleigh, Wake County, North Carolina, and being more particularly described as follows:

Being all of the real property, containing 90.45 acres, more or less, shown and described on those certain maps entitled "Highland Creek, Phase 1", recorded in Book of Maps 2007 (hopefully), Pages 150-165, inclusive, Wake County Registry, towhich maps reference is made for a more particular description, SAVING AND EXCEPTING THEREFROM the rights-of-way of public streets shown thereon.

EXHIBIT "B"

Legal Description of Approved Additional Land Shown on Master Plan

Legal Description of Approved Additional Land Shown on Master Plan

LYING and being in the City of Raleigh, Wake County, North Carolina, and being more particularly described as follows:

Parcel 1

Being all of those parcels or tracts of land identified as "Tract 1", containing 4,376,699 square feet or 100.48 acres more or less, and "Tract #2", containing 3,521,361 square feet or 80.84 acres, more or less, as shown on a plat entitled "Boundary Survey of Lands to be Conveyed from Surry P. Roberts to Centex Homes" dated September 6, 2005, prepared by MSS Land Consultants and recorded in Book of Maps 2005, Pages 1821-1825, inclusive, of the Wake County Registry, to which plat reference is made for a more particular description, SAVING AND EXCEPTING THEREFROM the property described on Exhibit A.

Parcel 2

Being all of the real property designated as "Lot 2" containing 0.690 acres and "Lot 3" containing 0.716 acre as shown on a plat entitled "Subdivision and Recombination Survey for Boyd Taylor" dated April 26, 2002, prepared by Jack R. Thomason, PLS, recorded in Book of Maps 2002, Pages 892, in the Wake County Registry, to which plat reference is made for a more particular description.

Parcel 3

Being the real property designated as "Sid Jones Drive (60'R/W") containing 0.48 acres as shown on a plat entitled "Subdivision and Recombination Survey for Boyd Taylor" dated April 26, 2002, prepared by Jack R. Thomason, PLS, recorded in Book of Maps 2002, Pages 891, in the Wake County Registry, to which plat reference is made for a more particular description.

Parcel 4

Being all of "Parcel 1", containing approximately 13.941 acres , as shown on a plat entitled "Subdivision and Recombination Survey for Boyd Taylor" dated April 26, 2002, prepared by Jack R. Thomason, PLS, recorded in Book of Maps 2002, Pages 890, in the Wake County Registry, to which plat reference is made for a more particular description.

Parcel 5

Being all of "Parcel 2", containing approximately 11.944 acres, as shown on a plat entitled "Subdivision and Recombination Survey for Boyd Taylor" dated April 26, 2002, prepared by Jack R. Thomason, PLS, recorded in Book of Maps 2002, Pages 890, in the Wake County Registry, to which plat reference is made for a more particular description.

Parcel 6

Being "Lot 1" containing 1.050 acres, "Lot 2" containing approximately 30,038 square feet, "Lot 3" containing approximately 30,255 square feet, "Lot 4" containing approximately 32,545 square feet, "Lot 5" containing approximately 38,805 square feet, and "Lot 6" containing approximately 32,285 square feet, all as shown on a plat entitled "Subdivision and Recombination Survey for Boyd Taylor" dated April 26, 2002,

prepared by Jack R. Thomason, PLS, recorded in Book of Maps 2002, Pages 890, in the Wake County Registry, to which plat reference is made for a more particular description.

Parcel 7

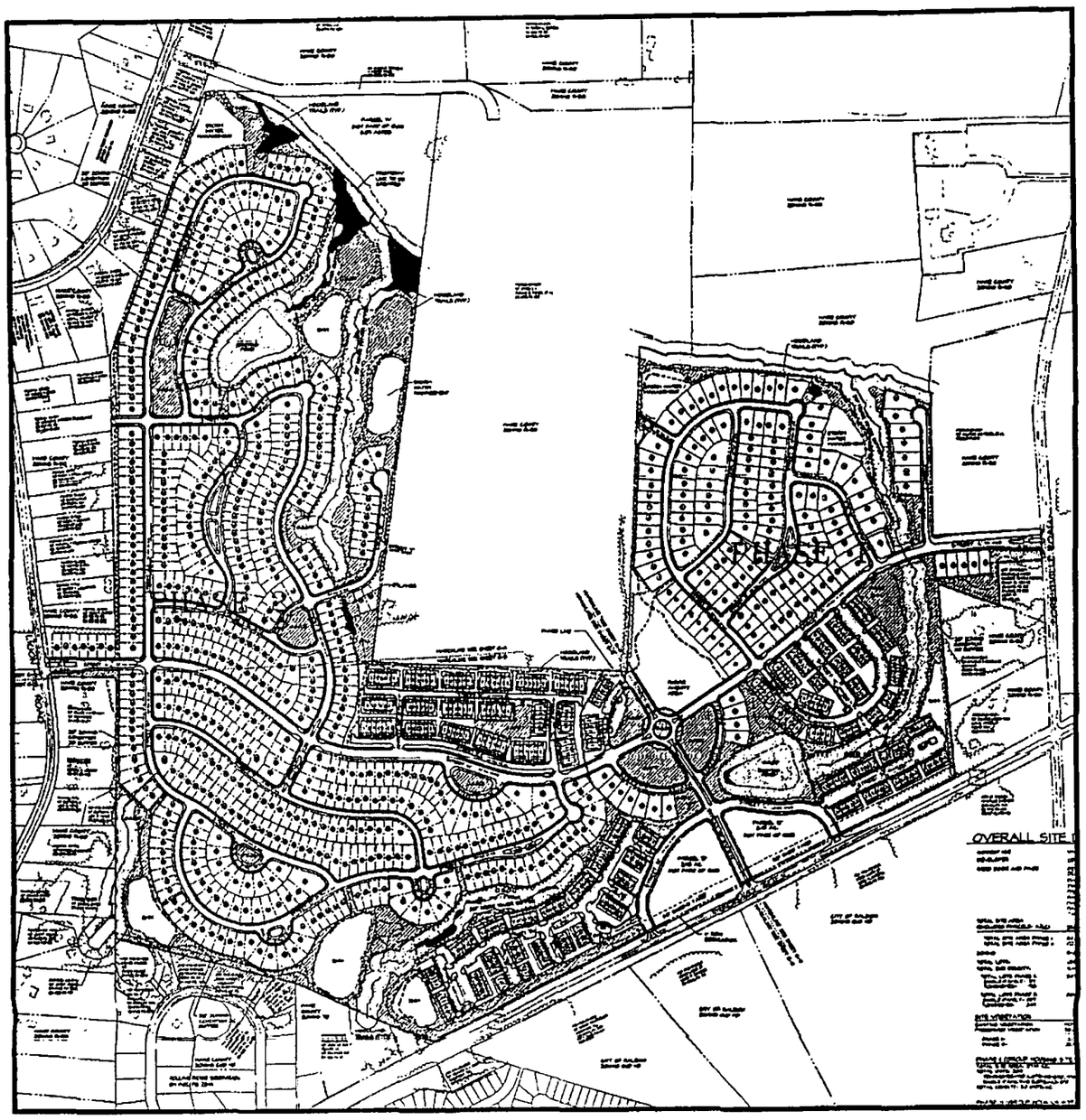
Being the real property, containing approximately 54.3 acres, as described in and conveyed by a warranty deed from Tayco Properties, LLC, to Southern Commercial Properties, LLC, dated June 30, 2004, recorded in Book 10904, Pages 110 through 115, inclusive, in the Wake County Registry.

Parcel 8

Being all of the real property, containing approximately 83.59 acres, as described in and conveyed by warranty deed from Rose E. DeBruhl to F. Roger Page, dated Janaury 2, 1999, and recorded in Book 12231, Pages 933 through 936, inclusive, in the Wake County Registry.

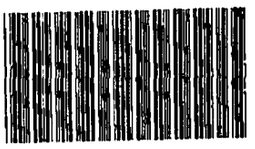
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EXHIBIT C



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS

BK012375PG00069



BOOK:012375 PAGE:00001 - 00069

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
3 # of Time Stamps Needed

This Document
69 New Time Stamp
69 # of Pages

22.004-1/20/06