WAKE COUNTY, NC 663
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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HOLD FOR: SMITH DEBNAM, BOX 182

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNNYBROOK ESTATES SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 22nd day of April, 2005, between SUNNYBROOK ASSOCIATES, LLC, a North Carolina Limited Liability Company (hereinafter called "Declarant") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the City of Raleigh, County of Wake, State of North Carolina, known as Sunnybrook Estates Subdivision; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements,

assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in the City of Raleigh, Wake County; and for the continued maintenance and operation of such recreational and common area.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE I

Section 1. The property which shall be held, used, transferred, mortgaged, sold, conveyed and occupied subject to this Declaration is located in the City of Raleigh, Wake County, North Carolina, and is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Sunnybrook Estates Homeowners Association, Inc., its successors and assigns.

Section 2. "Common Area" shall mean all property owned by the Association, or such other

property which the Association may hold subject to the provisions of the Declaration. Common Areas shall be defined and bounded on the plat(s) as "Common Areas", "Open Space", "Common Open Space", "Sight Distance Easements", "Sanitary Sewer Easements", and "Private Drainage Easements." Common Areas in each phase shall be conveyed to the Association in accordance with Article III, Section 3 prior to deeding the first Lot in the phase. Common Areas shall specifically include but shall not be limited to: (a) all water lines and sewer lines which serve the Properties that are located outside of any public street right-of-way or any City of Raleigh utility easement (excluding those lines serving a single Lot); and (b) all Stormwater Control Measures which serve the Properties that are located outside of any public street right-of-way, (excluding those pipes serving a single Lot); and (c) open space identified on recording plats.

Section 3. "Common Expense" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses of the Common Area and administration, maintenance, repair, improvement reconstruction or replacement of the Common Areas;

(c) Expenses declared to be Common Expenses by the provisions of this Declaration or the By-laws;

(d) Hazard, liability, or such other insurance premiums as the Declaration or the By-laws may require the Association to purchase;

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

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

(g) Utilities used in connection with the Common Areas.

(h) Unpaid assessment following the foreclosure of a first mortgage or first deed of trust.

(i) Replacement payments to the City of Raleigh pursuant to the Stormwater Replacement Protection and Access Maintenance Agreement and Installment Replacement Contribution by and among Declarant, the Association, and the City of Raleigh recorded in the Wake County Registry.

(j) Fees for services engaged by the Association.

Section 4. "Declarant" shall mean and refer to Sunnybrook Associates, LLC, a North Carolina limited liability company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Dwelling" shall mean an approved building constructed on a Lot for human habitation.

Section 6. "Family" shall mean an individual or two (2) or more natural persons related by blood to the third degree lineally, by marriage, adoption or guardianship living together in a Dwelling constructed on a Lot as a single housekeeping unit; or a group of not more than two (2) natural persons not related to the other by blood as described above, nor by marriage, adoption, or guardianship living together as a single housekeeping unit in a Dwelling constructed on a Lot.

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties, with the exception of the Common Area. Townhouse Lots shall be used for construction of single Family Dwelling units. Detached single family Lots shall be used to construct detached single Family Dwellings.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons

or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Properties" shall mean and refer to that certain real property hereinbefore described in Exhibit A.

Section 10. "Stormwater Control Measures" shall mean and refer to any detention ponds, drainage easements and all other stormwater measures including storm drainage pipes, which serve the Properties that are located in, under, upon private drainage easements.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and Over the Common Area for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association subject to the ordinances of the City of Raleigh to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to fine Owners for non-compliance with these Covenants, suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate fee simple title or transfer fee simple title and to all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by four-fifths (4/5) of each class of Members has been recorded.

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

(e) The right of the Association, with the assent of four-fifths (4/5) of all Class A Members and four-fifths (4/5) of all Class B Members, and in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the Members and the Association hereunder;

(f) The right of the Association to adopt, publish and enforce rules and regulations as provided in Article III.

(g) The right of the Association to exchange Common Area in accordance with the Raleigh City Code.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Properties, but such delegate shall be subject to the limitations of subsections (a) through (g) of Section 1 above.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except utility easements, and storm drainage easements, prior to the conveyance of the first Lot of each phase of development.

Section 4. Parking. Ownership of each Townhouse Lot shall entitle the Owner or Owners to the use of not less than two (2) automobile parking spaces, which shall be as near or convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association prohibits the parking of boats, trailers, recreational vehicles, jetskis, commercial vehicles and other such items on the Common Area and individual Lots. Outdoor storage or parking of any unlicenced vehicles, campers, boats, trailers or any vehicles that are not licenced automobiles, vans and sport utility vehicles is prohibited. No motor vehicles of the Owner, members of his family or tenants may be parked or stored on any Lot or any of the subdivision streets while on jacks or while being repaired. Parking or storage of motor vehicles on the grass area or sidewalk area of any Lot is prohibited. Boats, trailers, campers, commercial vehicles, and motor vehicles parked in violation of this Paragraph or in violation of the rules and regulations promulgated by the Board from time to time shall be subject being towed and/or fined or removed by the Association at the expense of the owner thereof.

Section 5. TV Antennas and Cablevision. Exterior equipment including, but not limited to, communications, telecommunications, microwave, television, cable television dishes, satellite dishes, and antennae, shall not be placed or installed by Owner, its agents, licensees, or representatives on the exterior front wall or on the exterior sidewalls of any structure erected or placed upon a Lot that is within twenty feet (20') from the front wall of the house or at any place on the premises that is parallel to said front wall

or sidewalls. In a location where the rear wall or a sidewall faces a street, the same restriction shall apply to the entire rear wall or the entire sidewall that faces a street and the areas of the premises that are parallel to said rear wall or sidewall. Under no circumstances may installed exterior dishes or receivers have a circumference larger that eighteen inches (18"). The Association may further regulate or prohibit the erection of television antennas and satellite dishes on individual Lots.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership in the Association as defined hereinabove shall be mandatory for each original Lot Owner and each successive Owner of a Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned provided that, when Class B membership terminates as set forth below, the Declarant shall be a Class A member for each Lot it then owns. Class A membership shall be divided into two classifications: Class A-1 members who shall be Owners of detached single Family Lots and A-2 members who shall be Owners of Townhouse Lots.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall be divided into two classifications: Class B-1 shall entitle the Declarant to three (3) votes for each detached single Family Dwelling and Class B-2 shall entitle the Declarant to three (3) votes for each Townhouse Lot owned. The Class B membership shall cease and be

converted to Class A membership on the happening of either of the following events, whichever occurs earlier.

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership or:

(b) on December 31, 2010; or

(c) Upon the surrender of all Class B membership by the holder thereof.

Section 3. When more than one person holds an interest in any Lot, all such persons shall be Members. If only one of the multiple Owners of a Lot is present at a meeting of the association, the Owner who is present is entitled to case the vote allocated to that Lot. If more than one of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over th meeting by any of the other Owners of the Lot.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the

land and shall be a continuing lien upon the property against which each such assessment is made. No lien shall be filed unless the assessment is 30 or more days in default. All claims of lien shall be recorded in the Office of the Clerk of Superior Court of Wake County, North Carolina which claim of lien shall state the description of the Lot encumbered by the claim of lien and the name and address of the Association, the record Owners of the encumbered Lot, at the time the claim of lien is filed, and the amount of the lien. The claim of lien shall be recordable any time after 30 or more days default, and the lien shall continue in effect until all sums have been paid in full. Upon full payment, all property secured by such claims of lien, the same shall be satisfied of record. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Areas, including the maintenance, repair and reconstruction of Stormwater Control Measures in accordance with the Stormwater Operations and Maintenance Manual and Budget attached hereto as Exhibit B, which is fully incorporated herein by reference, driveways, walks and parking areas situated on the Common Area, the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance of Common Areas and maintenance and landscaping of the of the Common Areas, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments levied against the Common Area owned in

fee simple by the Association, the maintenance of pedestrian paths, including maintenance of walks, cutting and removal of weeds, grass, landscaping and removal of unsafe diseased or dying trees and limps overhanging pedestrian paths, the payment of Common Expenses, the procurement and maintenance of insurance in accordance with this Declaration or bylaws, the employment of attorneys and other professionals to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, Stormwater Control Measures, paving and any other expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. In addition to the Stormwater Replacement Protection and Access Maintenance Agreement and Installment Replacement Contribution, the Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular or special assessments for Common Expense for the Owners of the kind of Lots that require the reserve fund or funds.

Section 4. Budget Ratification. The executive board of the Association shall vote amongst themselves on any proposed budget for the planned community and a majority vote of the board members shall be deemed ratification of such budget.

Section 5. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for Townhouse Lots shall be One Thousand and Eight Hundred Dollars ($1,800.00) per Lot and the maximum annual assessment for detached single Family Lots shall be Four Hundred Dollars ($400.00) per Lot. Owners of the

Townhouse Lots are paying for exterior maintenance of their structures and private streets. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(a) From and after January 1 of the year immediately following the conveyance of all the first Lot to an Owner, the maximum annual assessments may be increased effective January 1 of each year by less than 10% of the previous year's assessment, unless the Owners of 90% of all the Lots reject the budget.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for Lots may be increased above the increase permitted in Section 5(a) above unless Owners of Lots representing 67% or more of all the Lots reject the increase.

Section 6. Special Assessments for Capital Improvements. In addition to the assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Emergency Special Assessments. In the event of an Emergency (as hereafter defined), the Board, on behalf of the Association, in the Board's sole discretion and without a vote of the membership, may levy an Emergency Assessment for the purpose of taking preventative, protective,

stabilizing, or remedial actions to protect the Stormwater Control Measures and the Common Areas, or any improvements located thereon, and to further reconstruct, repair or replace any portion of the property, Stormwater Control Measures or improvements following such Emergency. For purposes of this Section, Emergency includes, but is not limited to, hurricanes, tornadoes, flooding, fires, acts of God or other naturally occurring phenomena. An Emergency assessment shall be due and payable as established by the Board of Directors.

Section 8. Lien to City. The Association grants and assigns to the City of Raleigh, North Carolina, rights to file a lien and collect such assessments without a vote of the Owners for monies owed by the Association to the City of Raleigh pursuant to the Stormwater Agreement. The payment of such assessments being secured by a lien against all the Property, including each Lots, upon the filing of a claim of lien by the Association or by the City, as the assignee of the Association's line rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Article 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 Wake County, North Carolina, which claim of lien shall state the description of the Property, or portion thereof, encumbered by the claim of lien, the name and address of the Association, the record owners of the encumbered portion of the Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after 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 recorded, plus interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per

year, collection costs and reasonable attorneys' fees. City lien claims 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 9. Notice and Quorum for any Action authorized under Sections 5 and 6. Unless specifically provided otherwise, written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. Unless specifically provided otherwise, at the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be more than 60 days following the preceding meeting.

Section 10. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots of each type and may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board of Directors. Provided, however, that the assessment for Lots owned by Declarant or any builder for which no certificate of occupancy has been issued shall be twenty-five percent (25%) of the regular assessments for other Lots.

Section 11. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following recordation of the map wherein such Lot is shown. Said annual assessments shall be paid ratably on an annual, semi-annual, quarterly or monthly basis as determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance

of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. The certificate of payment shall be furnished within 10 business days and after the receipt of the request. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 12. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest of 1.5% per month from the due date and also be subject to any late fees assessed. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. Foreclosure is to be in the same manner as that of Deeds of Trust, foreclosed under Article 2A of Chapter 45 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 13. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments

which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 14. Exempt property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to Dwelling use shall be exempt from said assessments.

Section 15. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant, a sum equal to at least two (2) full months assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. In addition, at the time of closing of the sale of each Lot by the builder/original purchaser, a sum equal to at least two full months assessment for each Lot shall be collected from the home buyer/purchaser and transferred to the Association to be held as a working capital fund. Thus, the builder/original purchaser and the home buyer/purchaser shall each pay a sum equal to at least two months assessment at the time of the closing of their purchases. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 16. Dues Paid In Advance. The annual assessments provided for herein shall commence as to Lots being purchased at the time of recordation of a deed from the Declarant to a new Owner, pro rated to the first day of the month following said recordation. An amount equivalent to one annual assessment (prorated to the end of the Association's fiscal year), plus any working capital collections, shall be collected at the time of closing to the ultimate consumer referred to in this Section.

Such annual assessments shall be paid ratably on an annual basis and shall be collected at the time of purchase by the ultimate consumer, also referred to as the home buyer/purchaser.

ARTICLE VI

EXTERIOR MAINTENANCE

Section 1. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Townhouse Lot which is subject to assessment hereunder, as follows: paint and/or stain the exterior, repair, replace, and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, and other exterior improvements. Such exterior maintenance to be provided by the Association shall not include glass surfaces, windows, screening, doors, doorsills, door hardware (including, but not limited to keys, locks and hinges), door casings, window sills, window casings, and garage doors. Further, it will be the Lot Owner's sole responsibility for water and sewer lines running from the street into and under the Townhouse, and any outside water faucets connected to the plumbing of the Townhouse, as these all shall expressly be the responsibility of the Lot Owner. Further, the Owner of any Townhouse Lot may at his election plant trees, shrubs, flowers, and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Townhouse Lot Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may undertake any required maintenance and add the cost thereof to the assessment against such Owner's Townhouse Lot.

The Owner shall not plant vegetation in the front and side yards except with the prior written approval of the Association.

Section 2. As a matter of information to future Members of the Association, the Declarant wishes to make it known that due to differing amounts of exposure to the elements and other factors, some Townhouses may require more maintenance than others and that it is in the best interest of the entire Association that all Townhouses be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform rate of charge for Townhouse Lot Owners without regard to the actual cost of maintenance of each Townhouse.

Section 3. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family or guest, or invitees, contract sellers, tenants or an independent contractor of the Owner, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouses upon the Lots and placed on the dividing line between the Townhouse Lots and all reconstruction or extensions of such walls, and, to the extent not inconsistent with the provisions of this Articles, 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 thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, the right of any such Owners to a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of another Owner to the extent necessary to perform repair, maintenance or construction of a party wall. Such repair, maintenance or reconstruction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provisions of this Article an Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner that No Continuation is Due. If any

Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property Owner has a right of contribution as provided in this Article, request of the adjoining property Owner or property Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request and without charge; provided, however, that when the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. In the event that a property Owner refuses or neglects to do so, it shall be deemed a waiver to proceed against the members, who are Owners of the Townhouse Lots.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. No dwelling building, fence, wall or other structure of any kind shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes or alterations in the color exterior paint, vinyl siding, roof-shingles, masonry or shutters) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said completed plans and

specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these covenant. No detached garage shall at any time be used for human habitation temporarily or permanently. Temporary structures are prohibited.

Section 3. No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Architectural Committee of the Association.

Section 4. Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored. (Keys and locks homeowners resp.)

Section 5. Grass and flowerbeds shall be maintained in a neat and orderly manner to appear as the grass has been mowed on a weekly basis and the weeds in the flowerbeds removed on a weekly basis. In the event this work is not done, the Association shall have the authority, but not the obligation, to perform this work in lieu of the Owner and assess the cost to the Owner through the Association, including any legal fees and administrative costs incurred by the Association. In addition, any alteration (including altering the grade of the Lot) of the landscaping of the front and/or side yards and/or in any landscape easement must be approved by the Architectural Committee of the Association.

Section 6. No yard art, including plastic flowers, which is visible from the street may be displayed on any Lot without the prior written approval of the Architectural Committee of the Association.

Section 7. No household furniture intended for interior use may be kept or stored on porches or yards.

Section 8. Unless otherwise required by the City of Raleigh, all garbage or refuse shall be

kept in the rear yard of all Lots; not in the front or side yards and may not be visible from the public street.

Section 9. Clothes lines, including temporary or retractable lines, are prohibited on any Lot.

Section 10. Upon the recordation of a deed from the Declarant to a builder, said builder shall be responsible for upkeep and cleanliness (including mowing of any grass on the Lot) of Lots for which no structure has been commenced. During the construction phase, the builder shall keep the Lot clean and maintain a dumpster or fenced area for the construction debris, so that the Lot is free from debris other than that contained in those areas. The fenced area must be cleaned at least once a week. Upon completion of the construction of a house, the builder shall establish a seeded or sodded lawn area and shall maintain that area in keeping with the requirements under this Article herein. At the commencement of construction at a Lot, the builder shall install such silt fencing and all other such Lot protection devices as may be required by any governmental agency.

Section 11. No noxious or offensive trade, activity, or language shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no trucks or tractors may be stored on the premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any Lot. Any business activity or trade that causes undue traffic, noise, outward signs of non-residential use or has any employee shall be prohibited, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Noise levels must be maintained in accordance with the City of Raleigh Code requirements at all times.

Section 12. Except for unit identification numbers required by the City of Raleigh, no billboards shall be erected or maintained on the premises. No more than one sign not larger than five square feet in size is to be placed on any lot; only for sale or for rent signs are permitted.

Section 13. Trespassing on any Lot is strictly prohibited.

ARTICLE VII

INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies covering the Common Areas shall be purchased by the Association for the benefit of the Association and the Members. All insurance policies covering Townhouse Lots shall be owned by the individual Owners thereof and shall be fully paid by such Owners. All insurance policies covering detached Family Dwelling Lots shall be owned by the individual Owners thereof and shall be fully paid by such Owners.

All policies shall be written with a company authorized to do business in North Carolina.

(b) Coverage. All buildings and improvements upon the Common Areas and all personal property included in the Common Areas secured by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement,

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars ($1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to single Owner.

(d) There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(e) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and charged to the Owners as an assessment according to the provisions above.

(f) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Members. The sole duty of the Association shall be to receive such proceeds as are paid and to hold the same for the purposes stated herein or stated in the By-laws.

(g) By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage (defined as cost of repair less than 50% of the current tax value), resulting in less than total destruction (defined as cost of repair valued at greater than or equal to 50% of the current tax value) of structures comprising his Lot, the Owner shall proceed, within 180 days of the casualty, to repair or to reconstruct the damaged structure in a manner consistent with the

original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs or repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner, within 120 days of the casualty, shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide Standard.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and endorse reasonable rules and regulations concerning the use and enjoyment of the Common Areas and the conduct of the Members and their guests. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model used by Declarant) shall be used expect for residential purposes and for purposes incidental or accessory thereto.

Section 3. Occupancy Limitation. No portion of any Lot or any Dwelling constructed on a Lot shall be occupied by more than one Family as defined in Article II of this Declaration.

Section 4. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the

Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 5. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling. Household pets are limited to two (2) household cats and one (1) domesticated dog. Said pet(s) may be kept or maintained provided that they are not kept or maintained for commercial purposes. Pitt Bulls, Rottweilers and other such vicious dogs are not permitted. All pets must be kept under the direct control of the owner by fence, leash or harness and may not run freely at any time. Pet owners are required to clean up after their pet(s) when in the Common Areas. Violations will be subject to a fine and/or legal action.

Section 6. Common Areas. No bicycles, scooters, motorized vehicles or any recreational vehicles shall be used in the Common Areas.

Section 7. Pond. There shall be no swimming, wading, fishing, boating of any kind, or remote control boats or other vehicles allowed in or around any pond.

Section 8. Clotheslines, Garbage Cans, and General Upkeep of Lots, Etc. No clothesline may be erected or maintained on any Lot. All lawn mowers, stored materials, wrecked unlicsensed or inoperable vehicles, and similar equipment shall be kept in an enclosed structure. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot. All garbage cans and other sanitary containers must be kept out of view from the street in the rear of the Dwelling, and shall not be permitted to be left on the street for pickup for more than 12 hours. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in garbage cans or other sanitary containers.

ARTICLE X

EASEMENTS

Section 1. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking area, water lines, sanitary sewers, storm drainage facilities, gas lines, cable lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the conveyance of the individual lots to Owners and the Common Area to the Association; and the Association by and through the Board of Directors, shall have the power and authority thereafter to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant, contractors, and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements and development of the Properties until such time as Class B membership terminates; provided, that all the Common Areas shall be restored to as near the condition as that which prevailed prior to the use of the easement as is reasonably practicable.

Section 2. All Lots and Common Areas shall be subject to easements for the encroachments constructed on adjacent Lots and Common Areas to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and down spouts and walls.

Section 3. An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water and sewer facilities,

electrical telephone, gas and cable antenna lines, fire fighting, animal control, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 4. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. No fence, wall or landscaping shall be installed in said easement which will interfere with the rights of the adjoining Lot Owner.

Section 5. Sight Triangle or Site Distance Easements. Within sight distance easements and sight triangles shown on the Plat, no obstruction, in whole or in part, between two and eight feet above the curb shall occur. For purposes of this section, an obstruction shall include, without limitation, any wall, fence, berm, foliage, sign or parked vehicle.

ARTICLE XI

GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by

judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they may be extended for successive periods of ten (10) years with the consent of 75% of the Members. This Declaration may be amended at any time with the consent of 75% of the Members.

Section 4. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within 30 days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO

CONDITIONS AND RESTRICTIONS OF SUNNYBROOK ESTATES

HOMEOWNERS ASSOCIATION, INC.

SUNNYBROOK ESTATES HOMEOWNERS ASSOCIATION, INC.

By: _____
President

Section 5. No amendment or termination of this Declaration of Covenants, Conditions and Restrictions for Sunnybrook Estates Subdivision relating to Stormwater control measures and replacement funds shall be effective unless reviewed and approved in writing by the Raleigh City Attorney or his deputy.

Section 6. Management and Contract Rights of Association. Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the Properties. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract at any time after providing 45 days written notice without justification or penalty after transfer of management by Declarant to the Association.

Section 7. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the note securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g)

receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy, all the above upon request of mortgage holder.

Section 8. Cluster Unit Development. The real property described in Exhibit A attached hereto is a part of a cluster unit development approved by the City of Raleigh which residential density transfers are permitted: therefore, 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 open space development may, in fact, preclude City of Raleigh approval of additional dwellings or further subdividing of lots.

Section 9. Stormwater Control Measures. The Raleigh City Code requires Stormwater runoff from the Properties be controlled and nitrogen loading from Stormwater runoff from the Properties be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner to significant daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that at all times the Stormwater Control Measures shall perform as designated and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In addition, the Association shall perform maintenance of the Stormwater Control Measures as set forth on Exhibit B. In the event that the Association neglects or fails to maintain, repair, replace or reconstruct the Stormwater Control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the City of Raleigh. In the event that the Owner

thereafter performs such maintenance, repair, replacement or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot.

Section 10. Additional Property and Density. No additional land may be added to the Property. The maximum number of dwelling units as defined by the Raleigh City Code that may be contained in the cluster unit development is 303.

ARTICLE XII

ELECTRICAL SERVICE

Section 1. Declarant reserves the right to subject the above described Property to a contract with Progress Energy of the Carolinas for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy of the Carolinas by either the Association, the Owners or both within said Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed by its Managers as of the day and year first above written.

SUNNYBROOK ASSOCIATES, LLC

By: _____
Manager

STATE OF NC

COUNTY OF Nash

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Don H. Berry personally appeared before me this day and acknowledged that he is a Manager of SUNNYBROOK ASSOCIATES, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of said limited liability company, the foregoing instrument was signed in its name by him as a Manager.

Witness my hand and official stamp or seal this the 21 day of April, 2005.

Wendy B. Kerns
Notary Public

My Commission Expires: 9-30-2005

WENDY B. KERNS NOTARY PUBLIC NASH COUNTY, N.C.

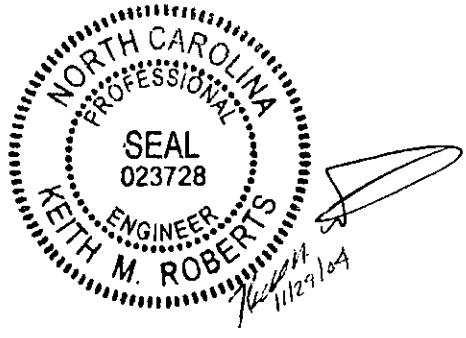
EXHIBIT A

BEGINNING at the intersection of the southern right-of-way of the Raleigh Beltline (Highways 64, 401, 70 & 50) and northwestern right-of-way of Sunnybrook Road (S.R. 2544) at a New Iron Pipe on Sunnybrook Road; running thence South 52°49'19" West 223.87' to an Existing Iron Pipe on Sunnybrook Road; running thence South 86°05'11" West 21.12' to an Existing Iron Pipe; running thence South 86°05'51" West 124.96' to an Existing Iron Pipe; running thence South 85°37'49" West 354.12' to an Existing Iron Pipe; running thence South 12°12'36" East 387.50' to an Existing Iron Pipe; running thence South 11°44'46" West 20.21' to an Existing Iron Pipe; in the western right-of-way of Sunnybrook Road; running thence along the western right-of-way of Sunnybrook Road the following two (2) calls and distances: (1) South 30°25'16" West 82.38' to an New Iron Pipe; and (2) South 25°56'10" West 146.01' to an Existing Iron Pipe; running thence North 74°45'45" West 207.10' to an AXLE; running thence South 15°14'15" West 100' to an Existing Iron Pipe; running thence South 74°46'35" East 200.31' to an Existing Iron Pipe in the western right-of-way of Sunnybrook Road; running thence North 76°30'13" West 300.67' to an Existing Iron Pipe; running thence North 76°52'34" West 188.84' to a New Iron Pipe; running thence South 14°58'24" West 351.68' to a New Iron Pipe; running thence South 76°50'46" East 490.61' to a New Iron Pipe in the western right-of-way of Sunnybrook Road; running thence South 76°50'46" East 30.00' to a New PK Nail within the right-of-way of Sunnybrook Road; running thence South 08°28'00" West 74.95' to New PK Nail; running thence North 76°48'25" West 37.96' to an Existing Iron Pipe in the western right-of-way of Sunnybrook Road; running thence North 76°48'25" West 894.24' to an Existing Iron Pipe; running thence South 80°26'52" West 30.29' to a point; running thence South 80°26'52" West 404.91' to an Existing Iron Pipe; running thence South 80°49'18" West 133.82' to an Existing Iron Rod; running thence South 60°44'15" West 365.41' to an Existing Iron Pipe; running thence South 18°35'27" West 596.80' to a New PK Nail in the northern right-of-way of Rock Quarry Road (S.R. 2542); running thence along the northern right-of-way of Rock Quarry Road South 89°20'53" West 21.10' to a New PK Nail; running thence North 18°15'27" East 595.43' to an Existing Iron Pipe; running thence South 88°59'40" West 175.19' to an Existing Iron Pipe; running thence North 06°37'13" East 32.73' to an Existing Iron Pipe; running thence North 86°49'21" West 233.02' to an Existing Iron Pipe; running thence North 86°46'34" West 27.53' to an Existing Iron Pipe Control Corner located in the eastern right-of-way of the Raleigh Beltline (Highways 64, 401, 70 & 50- variable width right-of-way); running thence along the eastern right-of-way of the Raleigh Beltline as it curves into the southern right-of-way of the Raleigh Beltline the following eighteen (18) calls and distances: (1) North 07°41'36" West 111.48' to an Existing Concrete Monument; (2) North 00°19'01" East 228.71' to an Existing Concrete Monument; (3) North 12°31'25" East 254.57' to an Existing Concrete Monument; (4) North 33°22'05" East 340.91' to an Existing Concrete Monument; (5) North 52°29'49" East 181.72' to an Existing Concrete Monument Control Corner; (6) North 60°51'58" East 305.74' to an Existing Concrete Monument; (7) North 66°21'57" East 200.80' to an Existing Concrete Monument; (8) North 88°41'01" East 279.06' to an Existing Concrete Monument; (9) South 88°01'41" East 433.43' to an Existing Concrete Monument; (10) South 85°40'31" East 115.01' to a Computed Point; (11) South 86°32'33" East 35.62' to a New Iron Pipe; (12) South 86°32'33" East 205.28' to a Computed Point; (13) South 88°08'14" East 152.50 to a Existing Concrete Monument; (14) North 86°27'40" East 394.93' to an Existing Concrete Monument; (15) North 83°33'44" East 160.81' to a Computed Point; (16) North 80°55'37" East 129.75' to a New Iron Pipe; (17) North 80°55'37" East 115.39' to a New Iron Pipe; and (18) North 77°45'49" East 217.94' to a New Iron Pipe in the northwestern right of way of Sunnybrook Road, the POINT AND PLACE OF BEGINNING, and being 52.19 total acres, according to a survey entitled, "Recombination Survey of Property Surveyed for Barton Development Group St. Mary's Township Wake County, North Carolina", by Acculine Surveying, dated May 1, 2003.

EXHIBIT B

STORMWATER OPERATIONS AND MAINTENANCE MANUAL
AND BUDGET

SUNNYBROOK ESTATES SUBDIVISION



OWNER:

SUNNYBROOK ASSOCIATES, LLC
Raleigh, North Carolina

Prepared by:

DEVELOPMENT CONSULTING SERVICES, INC.
1401 Aversboro Road, Suite 206
Garner, North Carolina 27529
(919) 625-0411 - Fax (919)772-3437

September, 2004

STORMWATER OPERATIONS AND MAINTENANCE MANUAL AND BUDGET
SUNNYBROOK ESTATES SUBDIVISION

I. INTRODUCTION

This manual establishes procedures for maintenance and operation of stormwater control measures for Sunnybrook Estates Subdivision. These procedures are in compliance with the guidelines of the City of Raleigh Stormwater Management Design Manual. The City rules require that stormwater control measures be inspected annually and that they be maintained in perpetuity as part of the development. If repairs are required as part of the annual inspection, the work should be completed immediately following the inspection. The City of Raleigh should be contacted for time extensions if needed. It is important to note that the stormwater control measures are require to stay in compliance with the conditions set out in the approvals for this development, and that failure to maintain the stormwater control measures is a violation of the ordinances of the City of Raleigh potentially subjecting each lot owner of the property to significant daily penalties and other enforcement actions.

BACKGROUND

A. Stormwater Retention Pond

There will be no stormwater retention ponds as part of this project. Due to the percent impervious area stormwater quality devices will not be required. Nitrogen requirements will be met through a buy down and no BMP's, Best Management Practices will be required

B. Level Spreaders

Concentrated flows that are discharged near existing Neuse River Buffers must be returned to sheet flow by the use of a level spreader. This project will involve the construction of four level spreaders. The level spreaders are located between lots 170 and 171, 186 and 187, 193 and 194 and 205 and 206.

Stormwater Detention

C. Detention Pond

As previously indicated water quality devices will not be required. However, due to the fact that post construction runoff will exceed pre-construction runoff by more than 10% stormwater detention will be required. The purpose in the detention devices will be to return post construction runoff to at or below preconstruction conditions. Typically, stormwater detention ponds are devices that remain dry and do not hold water continuously. However, the existing pond on this site will be used for detention purposes. The existing pond has a water surface area that is approximately 2.1 acres in size. The pond is centrally located on the site just south of lots 125 and 126. The normal water elevation of the pond is approximately 3 feet below the top of the existing dam which allows the pond to handle and store additional water volumes that may be caused by the development. The pond does not have a riser structure or any drain pipes to serve as a primary spillway. There is only an emergency / primary spillway. The spillway is approximately 12 feet in length and formed with concrete blocking. The pond is

protected by a 50 foot buffer which includes permanently protected open space which by definition must be maintained and not altered. However, it is acceptable to remove nuisance vegetation such as under brush, briers and small trees with stem diameters of 4 inches or less.

D. Underground Storage Pipes

As previously indicated water quality devices will not be required. However, due to the fact that post construction runoff will exceed pre-construction runoff by more than 10% detention will be required. The purpose in the detention devices will be to return post construction runoff to at or below preconstruction conditions. Stormwater detention will be controlled by the existing pond as indicated above and by oversized stormwater pipes with orifices at four locations as indicated on the construction plans. These detention pipes are located on the eastern property line of lot 112, the west property line of lot 31, the west property line of lot 126 and between lots 71 and 72.

The over sized pipes will be controlling stormwater for the Sunnybrook Estates subdivision. The plan was prepared by McIntyre and Associates, PLLC. The plan was reviewed and approved by the City of Raleigh in June, 2004.

The stormwater retention pipes are designed to discharge post-development flows below pre-development levels. Both the 2-year and 25-year storm events have been analyzed to evaluate the function of the pipes and outlet devices.

II. MAINTENANCE OF SUBSURFACE STORMWATER PIPES AND POND

MAINTENANCE OF POND EMBANKMENTS

A. Vegetation

The existing embankment has a very good ground cover of pine trees, hardwoods and pine straw, which, if properly maintained, will prevent erosion of the embankment and provide an easy surface for inspection. Currently there is no grass on the embankment and therefore there will be no need for re-seeding or mowing.

B. Erosion

Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The dam should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the embankment. Rills and gullies should be filled with suitable soil compacted and then seeded. Where eroded areas are observed, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently problems result from the concentration of runoff to one point of the embankment crest instead of a uniform distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the runoff to areas that are not experiencing erosion problems.

Abutment Areas - The abutment is the line formed where the embankment fill comes into contact with the existing slope. Run-off from rainfall concentrates in these gutter areas and can reach erosive velocities because of the steep slopes. If a normal stand of grass of other ground cover cannot be maintained on the abutments, additional measures may be needed such as jute matting to provide for the establishment of a good ground cover.

- Upstream embankment slope - Erosion problems can develop on the upstream face of the dam due to the fluctuation of water level in the pond. This is a result of a combination of wave actions and ground saturation, which occurs as the water level falls and the saturated ground becomes subjected to the wave action. If erosion becomes a problem, it may necessitate the installation of additional stone armoring along the zone subject to fluctuating water level. This would consist of 18" of NCDOT Class B stone for erosion control underlain with Mirifi 140 geotextile fabric. It should be centered at the point of the erosion problem and covering an area two feet above and below the approximate center of the eroded area. At the time of this report no erosion was noticed.

C. Seepage

Detection - An inspection of the downstream face of this dam should be made for seepage. Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is lusher and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas

where the embankment fill and natural ground interface are very common locations for seepage. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil" evident as spring carrying soil. The soil usually deposits around the boil area and is evident by the sedimentary deposits accompanying it.

D. Cracks, Slides, Sloughing and Settlement

- Cracks - The entire embankment should be inspected for cracks. Short, isolated cracks are usually not significant, but larger cracks (wider than 1/4"), well-defined cracks indicate a serious problem. There are two types of cracks: transverse and longitudinal.

  Transverse cracks appear crossing the embankment and indicated difference of settlement within the embankment. These cracks provide avenues for seepage and piping could develop.

  Longitudinal cracks run parallel to the embankment and may signal the early stages of a slide. In recently built structures, these cracks may be indicative of poor compaction or poor foundation preparation resulting in consolidation after construction.

- Slides - Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.

- Settlement - Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree this is normal and should be expected. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often proceeds failure.

- What to do if seepage, cracks, slides or settlement are detected:

  If any of the above items are detected there may be signs of significant problems which could lead to the failure of the structure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them.

E. Rodent Control

Generally in this urban environment, rodents are not a problem. Rodents such as ground hogs, muskrats and beavers are attracted to dams and reservoirs and can be quite dangerous to structural integrity and proper performance of the embankment and spillway. Groundhogs and muskrats thrive on burrowing in the manmade earth embankments that become pathways for seepage. In the event that burrows are detected within the dam then the rodents should be dealt with by removal.

F. Overtopping

The water level of the pond should be monitored during periods of heavy rainfall and runoff. The likelihood of the device overtopping anywhere other than the spillway is slight due to the 3 feet of freeboard above the emergency / primary spillway and storage capacity of the existing 2.1 Ac. pond. However, overtopping could result if a large slide or slough in the upstream or downstream slope of the embankment significantly lowered the pond crest. Overtopping could also occur if the spillway is not working properly.

G. Piping

Piping is usually indicated by a rapid increase in seepage rate, a muddy discharge at or near the downstream toe, sinkholes on or bubbling at or near the downstream toe may be an indication that piping is beginning. The downstream side of all devices and embankments, particularly in the area of the outlet device (riser structure) should be monitored regularly for any signs of change.

MAINTENANCE OF STORMWATER DETENTION PIPES

A. Erosion

Due to the nature of a subsurface detention device erosion should not be a critical issue. Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The outlet devices on the pipes should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the channel at the outlet. Where eroded areas are observed, the cause of the erosion should be addressed to prevent a continued maintenance problem. This can be corrected by reshaping the rip rap dissipator pad at the outlets to more evenly distribute the runoff to areas that are not experiencing erosion problems.

B. Failure of outlet devices

The failure of the outlet device (i.e. the orifices) could threaten failure of the entire measure. The orifices at the outlet end of the storage pipes pose the greatest risk to the measure for failure. These orifices are 4 inch and 12 inches in diameter and therefore pose a significant risk to getting clogged. The orifices should be inspected for signs of clogging. It is recommended that the pipes be checked for debris at least monthly to ensure that any debris that could lead to clogging and failure of the system be removed. Additionally, rip rap dissipators were installed at the outlets of these pipes for erosion control purposes during

the initial construction. The velocity of the storm water exiting the orifices is low enough that if a good stand of grass is established the rip rap dissipators would not be necessary. However, if grass is not established or if erosion is occurring at the exit of the orifices the rip rap dissipators should be maintain are reinstalled. This issue should be address on the below form each time the devices are inspected.

III. OPERATION

A. Record Keeping

Operation of the stormwater control devices should include recording of the following:

- Annual Inspection Reports - A collection of written reports including the annual inspection required by subsection C below should be kept on record in Section VI of this manual.

- Observations - All visual observations should be recorded. Where periodic visual inspections are performed following significant rainfall events which would be more than 5 inches of rain in a 24 hr period, these inspections should be logged into the Periodic Inspections, Operation & Maintenance Form in Section VI of this manual.

- Maintenance - Written reports of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation and Maintenance Form in Section VI of this manual.

- Other Operational Procedures - The owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the stormwater maintenance devices over time should be recorded on the as-builts.

B. ANNUAL INSPECTION

Stormwater control measures shall be inspected by a qualified registered professional engineer annually, and reports filed with the City of Raleigh Central Engineering Department in accordance with section 10-9028 of the Raleigh City Code. Any discrepancies shall be corrected within thirty (30) days.

IV. BUDGET

A. Annual Budget

Annual Inspection & Report
Registered Engineer 1 visit @ 4hrs/visit x $85/hr = $ 340

Semi-Annual Inspection & Report Registered Engineer	2 visits @ 4hrs/visit x $80/hr	=	$ 680
Miscellaneous Visits		=	$ 680
Replacement contribution to the City of Raleigh		=	$ 4,577.64
Maintenance Cost for mowing, seeding, fertilizing And trash removal.		=	$ 2000.00
Liability Insurance and property insurance premiums		=	$ 1,800.00
Sediment cost removal (every 3 years) annualized cost		=	$ 1000.00
	Total	=	$ 11,077.64
	Recommended Budget	=	**$ 11,500.00**

B. SINKING FUND BUDGET

Stormwater Control Devices

Pipe 1, 36"RCP	56 LF	@ $	45.00/LF	=	$2,520.00
Junction Box	1 EA	@ $	1,500/EA	=	$1,500.00
Pipe 2, 36"RCP	44 LF	@ $	45.00/LF	=	$1,980.00
Junction Box	1 EA	@ $	1,500/EA	=	$1,500.00
Pipe 3, 36"RCP	52 LF	@ $	45.00/LF	=	$2,340.00
Junction Box	1 EA	@ $	1,500/EA	=	$1,500.00
Pipe 4, 42"RCP	110 LF	@ $	55.00/LF	=	$6,050.00
Junction Box	1 EA	@ $	1,500/EA	=	$1,500.00

Pond

Earth Dam	7,000 CY	@ $	2.85/CY	=	$19,950.00
Seeding	0.5 AC	@ $2,700.00/AC		=	$ 1,350.00
				Sub-total=	$40,190.00

Total Escrow Account = $40,190.00

C. Contribution Requirements

Developer $40,190 x 15% = $6,028.50

Homeowner's Association
2/3 of $40,190 x .85 = $22,888.21(1st 5 years).
1/3 of $40,190 x .85 = $11,273.30 (2nd 5 years).

VI. INSPECTION, OPERATION AND MAINTENANCE CHECKLIST

- Pipe/Pond Inspection Checklist - Riser • Drains Page 9
- Orifices Inspection Checklist - Embankment • Pool Page 10
- Periodic Inspection, Operation and Maintenance Records Page 11
- Maintenance Agreement Pages 12

PIPE / POND INSPECTION CHECKLIST

DATE:_____

TIME:_____

SUNNYBROOK ESTATES SUBDIVISION STORMWATER DETENTION DEVICES, RALEIGH, N.C.

INSPECTORS_____

POND / STORAGE PIPES

		CHECK/CIRCLE CONDITION NOTED	OBSERVATIONS	ACTION: REPAIR	MONITOR	INVESTIGATE
STORAGE DEVICES		**TYPE:**				
TOP RISER	trash rack (N/A)					
	cracks/deterioration					
	displacement					
	improper alignment/displacement					
	cracks/joint deterioration					
	seepage					
DISSIPATOR	seepage/piping (N/A)	N/A				
	undercutting(N/A)					
	cracks/deterioration					
	displacement					
	erosion					
OUTLET		**TYPE: RIP-RAP**				
Rip-rap condition						
Erosion						

GENERAL COMMENTS, SKETCHES & FIELD MEASUREMENTS

ORIFICES INSPECTION CHECKLIST

DATE:_____

TIME:_____

SUNNYBROOK ESTATES SUBDIVISION STORMWATER RETENTION, RALEIGH N.C.

INSPECTORS_____

ORFICES

CHECK/CIRCLE CONDITION NOTED		OBSERVATIONS	ACTION: REPAIR	MONITOR	INVESTIGATE
U/S SLOPE	vegetation/rip rap				
	beaching/slides/cracks				
	undermining/erosion				
	rodent burrows				
CREST					
	ruts/erosion				
	cracks/settlement				
	poor alignment				
D/S SLOPE	vegetation/erosion				
	rodent burrows				
	sloughs/slides/cracks				
	seepage/wetness				
POOL	erosion/ground cover				
	Sedimentation level				
	water quality(N/A)				
ABUTMENT					
	vegetation/erosion				
	sloughs/slides/cracks/settlement				
	seepage/wetness(N/A)				

GENERAL COMMENTS, SKETCHES & FIELD MEASUREMENTS(continue on back if you need more space)

PERIODIC INSPECTION, OPERATION AND MAINTENANCE	SUNNYBROOK ESTATES STORMWATER RETENTION PIPES RALEIGH, NC

DATE	TIME	RAIN (")	POOL LEVEL	WEATHER CONDITIONS	GENERAL OBSERVATIONS OR COMMENTS	RECORDED BY

DATE	MAINTENANCE PERFORMED	COMMENTS	RECORDED BY

DATE	EQUIPMENT OPERATED	COMMENTS	RECORDED BY

MAINTENANCE AGREEMENT

PROJECT:_____

RESPONSIBLE PARTY:_____

ADDRESS:_____

_____

_____

I. Monthly or after significant rain events (5" or greater/event over 24 hours):
   A. Check and clear orifice of any obstructions.
   B. Check Pipes, remove trash, and repair eroded areas before next rainfall.

II. Semi-Annually
   A. Inspect the collection system (i.e. catch basin, yard inlets, easements) for proper functioning. Clear accumulated trash from basin grates and basin bottoms and check piping for obstructions.
   B. Check inlet pipes for undercutting. Repair if necessary.
   C. Repair any broken pipes
   D. Reseed disturbed vegetative areas and fertilize in October and April.
   E. Clear accumulated trash from pipes and orifices.

III. Annually

   A. Annual inspection by the engineer
   B. Check sediment level

IV. General
   A. All components of impoundment system to be kept in good working order. Repair or replacement of components will meet the original design specifications.
   B. Copies of all inspection reports and records of any preventive maintenance activities remedial or corrective action shall be maintained.
   C. This property and impoundment is also subject to the Operation and Maintenance Manual filed relative to this project.

I, _____, for _____ hereby acknowledge that I am the financially responsible party for maintenance of this impoundment. I will perform the maintenance as outlined on page twelve (12) of this document.

Signature:_____Date:_____

Company/Partnership:
_____

I, _____, a Notary Public for the State of:_____, County of _____, do hereby certify that_____, personally appeared before me this _____day of _____, 2003 and acknowledge due execution of the foregoing instrument. Witness my hand and official seal.

Seal

Notary:_____

My Commission Expires _____

EXHIBIT D

Construction estimates for construction of the retention pipes. The following is an estimate if the detention pipes if they had to be rebuilt.

Retention Pipe

Pipe 1, 36"RCP	56 LF	@ $45.00/LF	=	$2,520.00
Junction Box	1 EA	@ $1,500/EA	=	$1,500.00
Pipe 2, 36"RCP	44 LF	@ $45.00/LF	=	$1,980.00
Junction Box	1 EA	@ $1,500/EA	=	$1,500.00
Pipe 3, 36"RCP	52 LF	@ $45.00/LF	=	$2,340.00
Junction Box	1 EA	@ $1,500/EA	=	$1,500.00
Pipe 4, 42"RCP	110 LF	@ $55.00/LF	=	$6,050.00
Junction Box	1 EA	@ $1,500/EA	=	$1,500.00

Pond

Earth Dam	7,000 CY	@ $ 2.85/CY=		$19,950.00
Seeding	0.5 AC	@ $2,700.00/AC=		$ 1,350.00
	Total Replacement Account		=	$40,190.00

EXHIBIT D (CONT.)

YEARS	ANNUAL REPLACEMENT CONTRIBUTIONS PAID TO CITY OF RALEIGH ON JULY 1.
1	$15,655.28
2	$4,577.64
3	$4,577.64
4	$4,577.64
5	$4,577.64
6	$2,254.66
7	$2,254.66
8	$2,254.66
9	$2,254.66
10	$2,254.66

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

WAKE COUNTY
NORTH CAROLINA

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

North Carolina – Wake County

The foregoing certificate___ of Wendy B. Kerns

_____

_____

_____

_____

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

Laura M. Riddick, Register of Deeds

By: _____
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
51 # of Pages

22.004–7/11/03