Hold: Harold E. Russell, Jr. #167

Wake County,NC 186
Laura M Riddick, Register Of Deeds

Presented & Recorded 06/04/2002 10:30:06

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

SUBDIVISION DECLARATION FOR LANDOVER

THIS SUBDIVISION DECLARATION FOR LANDOVER is made this 29th day of May, 2002, by Sanders Landover L.L.C., a North Carolina Limited Liability Corporation, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of (or has a contractual right to purchase) certain real property located in Wake County, North Carolina, described on **Exhibit A** attached hereto and incorporated by reference (said real property described on **Exhibit A** being referred to herein as the "Existing Property'), the Existing Property being located in a proposed development presently named "Landover";

AND WHEREAS, Declarant desires to develop Landover as a community with a mixture of residential and recreational uses, and wishes to establish and declare this Declaration with respect to the Existing Property and all Additional Property subjected to this Declaration (the Existing Property, together with all Additional Property subjected to this Declaration being defined herein as "The Properties" in order to protect the value and desirability of The Properties by providing for development thereof in accordance with a common plan, and to provide for maintenance of certain shared facilities;

NOW, THEREFORE, Declarant hereby declares the Existing Property described in Exhibit A to this Declaration, and hereby declares that all of The Properties (as herein defined) shall be owned, held, transferred, sold, conveyed, donated, dedicated, leased, encumbered, occupied and used subject to the terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens hereinafter stated, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of The Properties and preserving the values and amenities (if any), in The Properties (this Declaration constituting no obligation, promise or representation of the Declarant to provide any Recreation Facility or amenity in The Properties, or to or for the Owners of The Properties, except as specifically stated herein), and all of which shall run with The Properties and all parts thereof and shall be binding on and inure to the benefit of each Owner of The Properties or any part thereof.

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration or any amendment hereto, or any Supplemental Declaration, unless amended or unless the context clearly indicates

otherwise, are defined as follows (terms and words used herein without definition shall have the meanings, if any, specified therefor in the "Definitions" section of the Act):

(a) "Act" is defined as the "North Carolina Nonprofit Corporation Act", currently contained in Chapter 55A of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

(b) "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.

(c) "Articles" is defined as the Articles of Incorporation of the Association, including all Duly adopted amendments thereto.

(d) "Association" is defined as Landover Homeowners Association, Inc.

(e) "Board" is defined as the Board of Directors of the Association. The Board is responsible for the management and administration of the Association. Unless otherwise specifically provided in this Declaration, other Governing Documents or applicable Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed or directed by the Board on behalf of the Association.

(f) "Builder" is defined as a Person, other than the Declarant, who is regularly in the business of constructing Dwellings on real property for resale to other Persons, and who purchases or becomes the Owner of one or more Lots or Development Parcels in The Properties for the purpose of constructing thereon a Dwelling for resale to other Persons.

(g) "Bylaws" is defined as the Bylaws of the Association as they may now or hereafter exist, including all Duly adopted amendments thereto.

(h) "City" is defined as the City of Raleigh, North Carolina, the County of Wake, 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, whichever governmental entity or entities is/are applicable.

(i) "City of Raleigh" is defined as the City of Raleigh, North Carolina.

(j) "Common Area or Common Property" is defined as all real property owned or leased by Landover Homeowners Associates, Inc.

(k) "Common Expenses" is defined as: (i) expenses of maintenance of the Common Property, including repair, restoration and replacement thereof ; (ii) expenses

declared to be or described as Common Expenses by the provisions of this Declaration; (iii) ad valorem property taxes and public assessments, if any, levied against the Association Common Property or other assets of the Association; (iv) premiums for hazard, liability or other insurance obtained by the Association; (v) all other expenses incurred by the Association in performing its functions and providing services under this Declaration, including operating Association management, administrative, and expenses and unexpected contingencies; and (vi) expenses determined by the Board to be Common Expenses of the Association. Provided, however, the term Common Expenses does not include the costs of the initial Improvements constructed or placed in any Association Common Property by the Declarant.

(l) "Declarant" is defined as Sanders Landover L.L.C., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure.

(m) "Declarant Control Period" is defined as the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:

(i) the later of 5:00 p.m. on the date that is seven (7) years following the date of recordation of this Declaration in the Registry.

(ii) the date on which the total number of votes entitled to be cast by the Class A Members and Class B Members of the Association equal the total number of votes entitled to be cast by the Declarant, as the Class C Member of the Association (the total number of votes of either of the three classes of membership in the Association may be increased or decreased by the annexation of Additional Property or withdrawal of portions of the Property as provided herein); and in such instances Class C Membership may be reinstated.

(iii) the date specified by the Declarant in a written notice to the Association.

(n) "Dwelling Unit" includes without limitation, condominiums and townhomes, and each attached dwelling unit located on its own separate lot. A "Detached Dwelling Unit" is defined as a Dwelling Unit located in a building on a Lot which contains only that Dwelling Unit. The Declarant, during the period of Declarant Control Period, and thereafter the Association, has the authority to resolve any and all conflicts, disputes or questions as to whether a Dwelling Unit is a Detached Dwelling Unit or an Attached Dwelling Unit.".

(o) "Existing Property" is defined as the real property subjected to this Declaration as

described in Article II and on **Exhibit A** attached hereto and incorporated by reference.

(p) "Governing Documents" is defined as this Subdivision Declaration, Articles and By-Laws, all applicable Supplemental Declarations and the Master Declaration, Articles and Bylaws.

(q) "Improvement" or "Improvements" is defined as the Dwelling on a Lot and all other improvements on a Lot exterior to the Dwelling (or on the exterior of the Dwelling), including any one or more of the following: exteriors of Dwelling Units and other buildings and structures (including materials, colors, sizes, and architectural styles)- decks; patios; motor vehicle parking areas; storage areas; recreational areas, equipment and facilities; mailboxes; exterior antennae, dishes or other apparatus to receive or transmit television or radio or microwave or other signals; fences; walls; hedges; mass plantings and other landscaping; poles; driveways; ponds; lakes; clearing, grading and other site preparation; swimming pools; signs; illumination and all other exterior improvements. The definition of Improvements includes both Initial Improvements and all subsequent changes and additions to existing Improvements." "Initial Improvements" are all of the Improvements constructed on a Lot or Unsubdivided Land through the time of issuance of a certificate or occupancy by the City for the Dwelling thereon.".

(r) "Intended Use" or "Intended For Use" is defined as the use proposed for a particular portion of The Properties or Declarant Property as shown on the applicable Subdivision Plan.".

(s) "Landscape Easement" is defined as a type of Common Property consisting of an area within or contiguous to The Properties that is reserved or established as an easement of the Association for the use, enjoyment or benefit of the Members for the maintenance therein of any one or more of the following: plants, trees, flowers, bushes, other landscaping materials, fencing, signs, fighting equipment, irrigation equipment and other associated equipment and apparatus. A Landscape Easement may be established or reserved by notation on a plat recorded in the Registry or by written document recorded in the Registry.

(t) "Legal Requirement" is defined as any Duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the City of Raleigh, North Carolina, the County of Wake, North Carolina, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the portion of The Properties, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

(u) "Limited Neighborhood Common Area" or "Limited Neighborhood Common

Property" (the terms being used interchangeably herein) is defined as Association Common Property that is established by the Declarant or the Subdivision Association for the benefit of a particular phase or section within the subdivision or Lot located within The Properties and which has been designated by the Declarant or the Association, whichever has established same, as Limited Association Common Property. There may be Limited Neighborhood Common Area in one or on more phases, sections, subdivisions, or Lot located within The Properties.

(v) "Limited Common Expenses" is defined as all of those expenses of the types included with the term Common Expenses that are related solely and specifically to Limited Neighborhood Common Property. The Limited Common Expenses shall be paid for solely by those Members of the Association who own real property located in a particular phase, section, or subdivision of The Properties or who won the particular Lot for or on which the associated Limited Neighborhood Common Property has been established.

(w) "Maintain", "Maintaining", "maintenance" or any substantially similar term used in this Subdivision Declaration, is defined to include any one or more of the following, as the context requires: construction, reconstruction, installation, maintenance, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(x) "Member" is defined as each Owner, with the membership of each Owner in the Association being as described herein.

(y) "Mortgage" or "deed of trust" (the terms being used interchangeably herein) is defined as any mortgage, deed of trust or other instrument that creates a security interest in real property, and includes all acts required to create such security interests.

(z) "Mortgagee" means an institutional lender (one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, (including real estate investment trusts) an other lender regularly engaged in financing the purchase, construction or improvement of real property, or any assignee of loans made by such lender, or any combination of any of the foregoing entities) which holds a first lien deed of trust encumbering a Lot. Only for the purposes of the notice and inspection rights contained in this Subdivision Declaration in the portions hereof dealing specifically with Mortgagees, amendment of this Declaration and termination of this Declaration, the term "Mortgagee" shall also include the Federal Housing Administration (FHA), the Federal Home Loan Mortgage Corporation (FBLMC), the Federal National Mortgage Association (FNMA), the Department of Veterans Affairs

(VA), the Government National Mortgage Association (GNMA) and any other public or private secondary mortgage market agency participating in purchasing, guaranteeing or insuring Mortgages which has notified the Board of such participation in writing (each of whom generically is referred to herein as a "Secondary Mortgage Market Agency"). Where the approval of Mortgagees is required, such approval means: (i) written approval; (ii) any written waiver of approval rights; (iii) a letter stating no objection; or (iv) presumptive approval if a Mortgagee does not respond to a notice from the Association requesting approval by notifying the Association, in the manner required herein for giving notices, within thirty (30) days after the Association gives notice to the Mortgagee of the request for approval.

(aa) "Neighborhood Association" is a Association of this Association which will manage Limited Neighborhood Common Property. A townhouse association is an example of a Neighborhood Association. Neighborhood Association is defined as a North Carolina nonprofit corporation organized and existing under the Act for the purpose of owning, managing and Maintaining Limited Neighborhood Common Area and Limited Neighborhood Common Property associated with a particular phase, section, subdivision, or Lot of the Properties.

(bb) "Owner " is defined as the owner of record as shown in the Registry, whether one or more Persons, of fee simple title to a Lot (and, with respect to the Declarant, Unsubdivided Land), but excluding those having an interest in the foregoing as a result of a contract, option to purchase, or as security for an obligation.

(bb) "Person" is defined as any natural person, corporation, partnership, limited liability company, association, trust or other legal entity.

(cc) "Plans" is defined as the plans and specifications for a proposed Improvement showing (where applicable) the size, shape, dimensions, exterior materials, exterior finishes and colors, location on the applicable portion of The Properties, driveway, parking, provisions for storm water drainage, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified from time to time in any applicable architectural guidelines.

(dd) "Property Classifications". The various portions of The Properties subjected to this Declaration shall be classified as one of the following (Note: The Property Classification of one or more portions of The Properties may change from time to time as plats thereof are re-recorded in the Registry or as otherwise provided herein - for example, with respect to applicable assessments. During the Declarant Control Period, the Declarant, in its sole discretion (and thereafter, the

Board), has the authority to resolve any question or dispute regarding the Property Classification of any part or all of The Properties):

(1) "dedicated public street right of way" (or "publicly dedicated street right of way or public street", the terms being used interchangeably herein) is defined as any portion of The Properties that has been dedicated to public use as a street by the Owner thereof in accordance with the Subdivision Plan, either by the recordation of a plat in the Registry, or in such other manner as required or allowed by the City. Following any closing of any dedicated public street right of way, the portion of The Properties formerly subject to such dedicated public street right of way shall be reclassified to the same classification as the adjoining portion of The Properties of which it becomes a part.

(2) "Exempt Property" is not subject to any assessments under this Declaration and is defined as all portions of The Properties included within any one or more of the following:
   a) All Common Property
   b) All Property owned by the City;
   c) All property within publicly dedicated street rights of way;
   d) All Recreation Facilities designated as Exempt Property by the Declarant during the Declarant Control Period (and thereafter, by the Association);

(3) "Lot" is defined as any portion of The Properties, except Common Areas and, shown as a separate numbered parcel Lot or unit on any plat recorded in the Registry.

(ee) "Recreation Facility" is defined as any portion of The Properties devoted to any recreation facility located on Common Property.

(ff) "Registry" is defined as the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded.

(gg) "Sign Easement" is defined as a type of Common Property consisting of an area within or contiguous to The Properties that is reserved or established as an easement of the Association for the use, enjoyment, or benefit of the Members for the maintenance therein of any one or more of the following: signs and associated landscaping materials, lighting equipment, irrigation equipment and other associated equipment and devices. A Sign Easement may be established or reserved by a notation on a plat recorded in the Registry or by a written document recorded in the Registry.

(tt) "Common Property" or "Common Area" (the terms being used interchangeably herein) is defined as all real property and Improvements thereon owned by the

Association for the use, enjoyment and benefit of the members, and all rights in and to all easements in or on real property together with all associated Improvements in or on such easements granted to or reserved by or on behalf of the Association (or by or on behalf of the Declarant for later transfer or assignment to the Association) for the enjoyment or benefit of its members. Common Property typically will be established by an instrument or plat recorded in the Registry, and identified in such instrument as "Common Area", "Common Property", "Private Street", Private Open Space", "Common Open Space", "Greenway", "Open Space", "Buffer", or some other similarly descriptive term. Common Property also includes all "Landscape Easements" and "Sign Easements" as defined herein. Neighborhood Common Property also includes all Limited Common Property.

Common Property or Common Area also shall include all property from time to time included in the definition of "Common Areas" contained in Section 10-3003 of the Raleigh City Code or in any replacement section of the Raleigh City Code. At the time of the execution of this Declaration, Section 10-3003 defines "Common Areas" as Property intended for the use and benefit of the residents of a particular development; common areas include (1) any private streets, (2) any storm water device including any impoundment area that serves more than one (1) individual Lot unless otherwise provided by covenants approved by the City Attorney or Deputy Attorney, (3) any utility line located outside public street rights-of-way and public utility easements, and not serving an individual Lot, (4) any site or facility designated on any recorded plat or in any declaration of covenant, and (5) any City Code required shared facility or open space."

(hh) "Subdivision Plan" is defined as the most current development plan approved by the City of Raleigh, including a subdivision plan or cluster development plan for the applicable portion of The Properties governed by this Association. When two or more subdivision plans are approved for the same portion of The Properties, the most current and most specific plan controls.

(ii) "The Properties" is defined as the Existing Property governed by this Association, together with all Additional Property that may be annexed.

ARTICLE II

THE PROPERTIES; ANNEXATION AND WITHDRAWAL

Section 1. Property Made Subject To Declaration. The Existing Property described on **Exhibit A** attached hereto and incorporated by reference is hereby made subject to this Declaration.

Section 2. Annexation or Withdrawal of Property by Declarant. At any time during the Development Period the Declarant, in its sole discretion, by Supplemental Declaration may, but shall not be required to, annex (or subject, the words being used interchangeably in the context of adding to The Properties) to this Declaration the additional properties described in Exhibits B and C, which annexation must be approved by the City of Raleigh. The Declarant may, with City of Raleigh approval, withdraw a portion of The Properties.

Section 3. Conveyance of Common Property In Newly Annexed Areas. Prior to the sale of any Lot within each annexed phase, the property Owner will convey to the Association any Common Property located within the newly annexed property; all conveyances shall be made in the same manner as set forth in Article III, Section 2.

ARTICLE III

RIGHTS IN AND TO THE COMMON PROPERTY

Section 1. Owners' Rights and Easements of Enjoyment. Pursuant to this Declaration and any applicable Supplemental Declaration(s), every Owner shall have a right and easement of use and enjoyment in and to the Association Common Property, which right and easement shall be appurtenant to and shall pass with the title to each portion of The Properties owned by such Owner; PROVIDED, HOWEVER, such easement shall not give any Owner the right to make alterations, additions or Improvements to any part of the Association Common Property, nor to encumber the Association Common Property as security for any indebtedness of the Owner. Subject to the terms of the Declarations and the Bylaws, any Owner may delegate or assign such Owner's right of use and enjoyment in and to the Association Common Property to the Owner's family members, lessees, guests, invitees, and contract purchasers (who reside on the portion of The Properties owned by such Owner).

Section 2. Title to the Common Property. Declarant shall convey to the Association (by one or more deeds, without warranty at Declarant's option) fee simple title to all real property portions of the Common Property owned by the Declarant, free and clear of all encumbrances and liens, except for the Declarations, ad valorem property taxes subsequent to the date of conveyance, street rights-of-way, storm water drainage easements, utility easements and greenway easements. Title to such portions of the Common Property shall be conveyed by Declarant to the Association by Declarant of the first portion of the applicable phase, section or subdivision of The Properties in or adjacent to which that Common Property is located (provided, however, any failure of the Declarant to so convey the Common Property shall not invalidate the Declarations, shall not constitute a breach of the Declarations giving rise to any legal remedy other than suit for specific performance to convey such Common Property and shall not invalidate any subsequent conveyance to the Association of the same or an or common Property. The Declarant shall assign to the Association rights in and to any and all easements that constitute Association Common Property, as and when Declarant determines, in its sole discretion, it is necessary or desirable. The Association shall not refuse Declarant's classification as Common Property of any of The Properties or Declarant Property or Declarant's Additional

Property or easements to be maintained by the Association, nor shall the Association refuse to accept the conveyance, transfer or assignment of any Association Common Property.

Section 3. Extent of Members' Easement. The rights and easements of enjoyment of the Owners in and to the Common Property are subject to all of the following:

(a) The right of the Association to prescribe and enforce regulations governing the use and maintenance of the Common Property;

(b) Temporary unavailability of any of the Common Property for necessary maintenance;

(c) The right of the Association to borrow money for the purpose of Maintaining the Common Property or to enable the Association to perform its functions or provide the services under this Declaration shall be as provided in Article IV, Section 4 of this Declaration.

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;

(e) The right of the Association to suspend the rights (voting and other) and easements of enjoyment in and to the Common Property of any Owner, or any Owner's family member, lessee, guest, invitee, or contract purchaser, for any period during which any assessment owed by the Owner remains unpaid, and for a period not to exceed one hundred and twenty (120) days for any infraction of the Association's published rules and regulations. Provided, however, no such suspension shall constitute a waiver or discharge of the Owner's obligation to pay any assessment or other charge under this Declaration. Further provided, the Association shall not suspend the right of any Owner to use any portion of the Common Property over which there is an easement that provides vehicular or pedestrian access for ingress and egress from a private street or a public street, a walkway or parking area, to such Owner's portion of The Properties, or over which a sanitary sewer, water, stormwater drainage or other utility easement is located that provides such utility services to such Owner's portion of The Properties, but such Owner shall remain subject to the rules and regulations, if any, established by the Association for such use of that portion of the Common Property;

(f) Subject to the approval of the City of Raleigh, the right of the Association to charge reasonable fees for use of the Common Property;

(g) Subject to the approval of the Planning Director of the City of Raleigh, the right of the Association (and the right of the Declarant to require the Association during the Declarant Control Period) to exchange portions of the Sub-Association Common Property to correct erroneous, unintentional or inadvertent conveyances of Common Property to the Association.

(h) Subject to any approval required by the Planning Director of the City of Raleigh, the right of the Association to exchange portions of the Common Property to eliminate unintentional encroachments of Improvements or easements and for the other purposes and according to the procedure set forth in Article IV, Section 3 of this Declaration.

When Common Property is conveyed by the Association, upon such conveyance that Common Property shall be reclassified to a different Property Classification in accordance with this Declaration.

(i) Subject to the affirmative vote by each class of membership of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a Duly called meeting of the Association, the right of the Association to sell, dedicate or transfer all or any part of the Common Property to any public agency, authority, or provider of utility services, for such purposes and upon such terms as the Board, or the Members who exercise the required affirmative vote (if the motion or resolution passed by such vote contains such terms), may determine.

(j) Subject to both the approval of the City of Raleigh and the affirmative vote by each class of membership of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a Duly called meeting of the Association, the right of the Association to transfer title to any part or all of the Common Property to another nonprofit corporation or association organized and existing for purposes substantially similar to the Association with respect to the Common Property. Upon the approval of the Board, the Association may lease from, or accept transfer of title from, any such nonprofit corporation or association of any part or all of the property owned by such nonprofit corporation or association.

(k) Easements for storm water drainage, storm water control or removal, utilities, walking trails, horse trails, exercise trails, Sign Easements, Landscape Easements and other matters shown on recorded plats of the Common Property or created or reserved by Declarant prior to or simultaneously with conveyance of such Common Property by Declarant to the Association, and/or granted by the Association as permitted by this Declaration.

(l) all other provisions of this Declaration affecting such rights and easements; and

(n) Owners and their family members, lessees, guests, invitees, contractors and contract purchasers, without the prior written consent or approval of the Declarant (or the Board, following the end of the Development Period) shall not do any of the following within any portion of any Common Property, except as reasonably may be required to perform any Owner Maintenance Responsibilities specified in the Article of this Declaration dealing with same:

(1) Grant any easements of any nature whatsoever;

(2) Remove any trees or vegetation, except in an emergency situation or in order to prevent injury or damage to any Person or property;

(3) Erect gates, fences or other structures;

(4) Remove or interfere with any structures maintained in the Common Property by the Association.

(5) Place or maintain any garbage receptacles;

(6) Fill or excavate;

(7) Plant vegetation in, or otherwise restrict or interfere with the maintenance of, the Common Property.

Section 4. Leases Subject to this Declaration. Every lease agreement between an Owner and a lessee for the lease of a portion of The Properties shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents, and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. Provided, however, all such leases shall be subject to the terms of this Declaration and the other Governing Documents, whether or not stated therein.

Section 5. Ingress and Egress. Notwithstanding anything to the contrary appearing in this Declaration, (i) if vehicular or pedestrian ingress and egress from a public street, private street, a walkway or a parking area to any portion of The Properties is over any part of the Common Property as shown on any plat or described in any instrument recorded in the Registry, or (ii) stormwater drainage, sanitary sewer, water or other utility services are provided to or from such portion of The Properties over or through an easement located on the Common Property as shown on any plat or described in any instrument recorded in the Registry, any conveyance or encumbrance of that portion of the Common Property shall be subject to those easements for ingress and egress stormwater drainage and/or utilities.

ARTICLE IV

FUNCTIONS AND SERVICES OF THE ASSOCIATION

Section 1. Minimum List of Functions and Services. The following are the "Minimum List of Functions and Services" which the Association shall provide, perform, accept, or be responsible for, as the case may be, the expenses for same being Common Expenses under this Declaration:

(a) The Association shall carry out the Association's obligations and business under the terms of the Governing Documents, including legal, financial, accounting and

communications services, and shall provide or procure the administrative services necessary in connection therewith;

(b) The Association shall own the Common Property and shall accept transfer of ownership of any and all Common Property from the Declarant or other Persons annexing additional land into the Association;

(c) The Association shall accept from the Declarant any and all assignments of Declarant rights under this Subdivision Declaration, and Supplemental Declarations, and shall assume all obligations which are incident to such assignments as they relate to any Common Property, architectural approvals or other functions or services performed or provided by the Association;

(d) The Association shall accept from the Declarant any and all appointments of the Association as the agent of the Declarant for administration and enforcement of any of the provisions of this Subdivision Declaration or Supplemental Declarations, and shall assume all obligations which are incident to such appointments as they relate to any Common Property, architectural approvals or other functions or services performed or provided by the Association;

(e) The Association shall maintain the Common Property, including portions thereof located in easements granted to or reserved by the Association or for Declarant. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which the City or any other Person is responsible for and performs such maintenance;

(f) The Association shall keep complete records of all its acts and corporate business;

(g) The Association shall make available to each Member making written request therefor an annual financial report and, upon either the (i) the affirmative vote of majority of the votes cast by the Members present at a Duly called meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of one or more classes of Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor;

(h) The Association shall make available for inspection by the Owners and Mortgagees and their designated agents, upon reasonable request and during normal business hours, current copies of the Association Governing Documents, the rules and regulations of the Association, and the books, records and financial statements of the Association;

(i) The Association shall establish an annual operating budget as provided in this Declaration.

(j) The Association shall establish the amount of and collect assessments as provided for in this Declaration;

(k) The Association shall establish reserve funds as provided in this Declaration,

(l) The Association shall hold meetings and give proper notice thereof, as required by the Governing Documents and applicable Legal Requirements.

(m) The Association shall obtain and Maintain insurance as required in this Declaration;

(n) The Association shall pay all ad valorem taxes and assessment levied against the Common Property, and pay all utilities used for Common Property.

(o) To the extent that they are not Maintained by the Owners of those portions of the Properties on which they are located, the Association shall Maintain all Pedestrian Access Easements required to be located on any portion of The Properties pursuant to Subdivision Plan approvals given by the City of Raleigh, and/or pursuant to plats of The Properties recorded in the Registry, and/or pursuant to written Maintenance agreements with the City of Raleigh (and the Association may enter into such Maintenance agreements with the City of Raleigh), including removal (or restoration, if appropriate) of trees, plants and other landscaping materials that are either dead, damaged or are in a condition that poses a safety hazard or interferes with pedestrian passage. The City of Raleigh shall not be liable for any accidents, injuries or damages to pedestrians caused by any encroachment's by the Association into a Pedestrian Access Easement, and the Association shall indemnify and hold harmless the City of Raleigh from and against such liability.

Section 2. Other Functions and Services. The Association is authorized and empowered but not required (except as specified in the immediately preceding Section 1), to do, provide, perform, accept, or be responsible for the following the expenses for same being Common Expenses under this Declaration:

(a) The Association may take all actions its deems necessary to enforce and implement the provisions of the Governing Documents, and to perform any of the functions or services delegated to the Association by the Governing Documents;

(b) To the extent that such services are not, in the opinion of the Board, provided adequately by the City, the Association may provide for Maintenance of city owned or controlled property located in or contiguous for The Properties.

(c) The Association may make reasonable rules and regulations not inconsistent with any Governing Document or Legal Requirement for the use and operation of the Common Property, and amend them from time to time. Provided, however, any such rule or regulation adopted by the Board of the Association may be amended

or repealed by the affirmative vote of a majority of the votes cast by the Members present at a Duly called meeting of the Association.

(d) The Association may enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Property;

(e) Association may borrow funds for capital acquisition or for improvements to Common Property, which borrowing may be secured by assignment or pledge of Association rights against delinquent Owners or by liens on other Association assets, as determined by the Board, subject to the Governing Documents and applicable Legal Requirements;

(f) The Association may enter into contracts to establish and use one or more bank accounts;

(g) The Association may sue or defend in any court of law on behalf of the Association, and may employ attorneys and other necessary professionals in connection therewith;

(h) The Association may adjust the amount, collect, and use any insurance proceeds to repair damage to or replace Common Property and if proceeds are insufficient to repair damage to or replace Common Property, levy special assessments (in the manner provided herein) to cover the deficiency;

(i) The Association may provide insect and pest control, private security, and other services for The Properties as the Board in its reasonable discretion determines from time to time;

(j) The Association may employ a manager or firm to manage the business and property of the Association (herein also referred to as a "community association manager"), and may employ independent contractors or other employees as the Board may deem necessary;

(k) The Association may retain the services of legal and accounting firms and such other professionals and/or tradesmen as it deems necessary and appropriate;

(l) The Association may contract with the Declarant or any other Person for performance of services which the Association is required to perform pursuant to the terms hereof, such contracts to be at competitive rates and upon such terms and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;

(m) The Association may establish from time to time the tax status of the Association for federal and State of North Carolina income tax purposes, as determined by the Board to be in the best interests of the Association;

(n) The Association may contract with other nonprofit corporations or associations which exist for purposes substantially similar to those for which the Association exists, with respect to the maintenance of property owned by such corporation or association; and

(o) In addition to the insurance coverage required under the immediately preceding Section 1, the Association may obtain and Maintain such other insurance coverage as the Board determines to be in the best interests of the Association.

Section 3. Exchange of Conveyance of Association Common Property. Subject to the applicable Legal Requirements, the Association, upon request of the Declarant during the Development Period, shall reconvey portions of the Common Property to the Declarant to correct erroneous, unintentional or inadvertent conveyances of Common Property by the Declarant to the Association that are inconsistent with the applicable Subdivision Plan.

The Association, without the consent of the Members, except as required by the Raleigh City Code, may exchange portions of the Common Property for any one or more of the following purposes: (i) to eliminate unintentional encroachments of Improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust Lot or Unsubdivided Land boundary lines, and (iv) as otherwise determined by the Board to facilitate the orderly subdivision and development of The Properties, subject to the following: (i) no such transfer shall reduce the portion of the Common Property that constitutes "open space" below the minimum amount of "open space" required by the City of Raleigh; (ii) the Planning Director of the City of Raleigh approves any boundary line adjustment; (iii) any boundary line adjustment is approved by the Owners of all portions of The Properties affected by the adjustment; (iv) each portion of The Properties previously contiguous to Common Property (excluding easements) remains contiguous to Common Property, unless otherwise approved by the Owner thereof, and (v) any conveyance of real property to the Association must be free and clear of all encumbrances except for this Declaration and any applicable Supplemental Declaration or Subdivision Declaration, street rights of way or access easements, greenway easements, and easements for utilities and storm water drainage. At the time of the recordation of this Declaration, the Raleigh City Code requirements applicable to exchanges of Sub-Association Common Property are contained in Section 10-3073(a)(2).

Any of the foregoing real property acquired by the Association shall be part of the Common Property and, without further act of the Association or its Members, shall be released from all provisions of this Subdivision Declaration or any applicable Supplemental Declarations except those applicable to the Common Property. The portion of the Common Property acquired by the Declarant or other Person, without further act of the Association or its Members, shall cease to be Common Property and shall be subject to those provisions of this Subdivision Declaration, and any applicable Supplemental Declarations that would have been applicable to such real property had it not been Common Property, except that, if required by the City, such portion of the Common Property may be conveyed by the Association to the City free and clear of all of the terms of this Subdivision Declaration, or any applicable Supplemental Declarations.

Section 4. Mortgage and Pledge. The Association shall have the power and authority to mortgage the Common Property and to pledge its other assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under this Declaration. Provided, however, any such mortgage of Common Property and any pledge of substantially all of the assets of the Association first shall be approved by the affirmative vote by each class of membership of sixty-seven percent (67%) or more of the votes cast by the Members of each class present at a Duly called meeting of the Association and provided that the rights of any Mortgagee in the Common Property shall be subordinate to the rights of the Owners.

The Declarant may, but shall not be required to, make loans to the Association with terms and interest similar to those generally available for commercial loans, subject to the foregoing and further subject to approval by the Declarant of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, at any time that there is any unpaid amount owed to the Declarant under any loan made by the Declarant to the Association, without the Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

Section 5. Liability Limitations. Neither the Declarant, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any shareholder, director, officer, member, manager, agent or employee of the Declarant, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association. Neither Declarant nor the Association, nor any of the shareholders, directors, officers, members, managers, agents or employees of either, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's portion of The Properties or Improvements thereon, or for failure to Maintain the same. The Association shall, to the maximum extent permitted by any Legal Requirement, indemnify and defend all directors of the Board, all officers of the Association, and all members of the Architectural Approval Committee and other committees appointed by the Association, from and against any and all loss, cost, expense, damage, liability, claim or cause of action arising from or relating to the performance by the directors, the officers, or members of such Architectural Approval Committee or other committees, of their duties and obligations, including all costs of defending against same (including reasonable attorney's fees), except for any such loss, cost, expense, damage, liability, claim or cause of action arising out of or resulting from the gross negligence or willful misconduct of the Person to be indemnified, or for liabilities resulting from being a Member or Owner, or resulting from other acts or omissions for which applicable Legal Requirements prohibit or restrict a North Carolina nonprofit corporation from indemnifying, in which event the applicable Legal Requirements shall control the extent of the indemnity.

Neither the Board, the Association, any current or former Owner, and the Declarant shall not be considered as a bailee of any personal property stored or placed on the Common Property (including vehicles parked on the Common Property), whether or not exclusive possession of the particular area is given to the Person who owns such personal property nor shall any of the foregoing Persons (other than the Person who owns the personal property) be responsible for the

security of such personal property or for any loss or damage thereto. The Association shall not be liable for any failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage which is caused by the elements or by any Owner or any other Person, or which results from electricity, water, snow or ice which may leak or flow from or over any portion of The Properties or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Property or from any action taken by the Association to comply with any applicable Legal Requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefiting the Association or any Owner.

Section 6. Merger or Consolidation. Upon a merger or consolidation of the Association with another association in accordance with all applicable Legal Requirements, the properties, rights and obligations of the Association, by operation of law, may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, by operation of law, may be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association under this Declaration and may administer the terms and provisions of this Subdivision Declaration and any applicable Supplemental Declarations, together with the terms and provisions of any declarations, covenants and restrictions applicable to other property under the jurisdiction of the surviving or consolidated Association, as one plan. Other than as specifically stated in the plan of merger or consolidation approved pursuant to all applicable Legal Requirements including approval by the City of Raleigh, no merger or consolidation shall effect any revocation of the provisions of this Declaration with respect to The Properties, including the limits on any assessment or any other matter substantially affecting the interests of the members of the Association. During the Development Period, no merger or consolidation of the Association with another association shall be valid without the written consent of the Declarant.

ARTICLE V

ASSOCIATION MEMBERSHIP; VOTING RIGHTS

Section 1. Membership. Each and every Owner, including the Declarant, is a Member of the Association and, by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any portion of The Properties, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents and applicable Legal Requirements. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the portion of The Properties owned by the Owner, and the Board may adopt reasonable rules relating to the proof of ownership. Membership in the Association shall terminate automatically whenever a Person ceases to be an Owner (except that Declarant's Class B Membership shall terminate only as provided herein), but such termination shall not release or relieve any such Person from any liability or obligation incurred under this Declaration during

the period of such Person's ownership, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 2. Classes of Voting Members. The Association shall have three (3) classes of voting membership as follows:

Class A. Class A Members are all Owners of Lots containing or intended for a single family attached dwelling units excluding the Declarant during the Declarant Control Period. Provided, following the end of the Declarant Control Period, the Declarant also is a Class A Member with respect to all Lots and Unsubdivided Land owned by the Declarant. Except as otherwise provided herein, Class A Members are entitled to the following votes:

(1) A Class A Member is entitled to one (1) vote for each Attached Lot Owned by such Class A Member. When the Class C Membership terminates, Declarant shall be entitled to one (1) vote for each for each Lot owned. Only one (1) vote is entitled to be cast for each Lot, regardless of the number of Owners thereof and fractional voting is prohibited;

Class B. Class B Members are all Owners of Lots containing or intended for a single family detached dwelling units, excluding the Declarant during the Declarant Control Period. Provided, following the end of the Declarant Control Period, the Declarant also is a Class B Member with respect to all Lots and Unsubdivided Land owned by the Declarant. Except as otherwise proved herein, Class B Members are entitled to the following votes.

(1) A Class B Member is entitled to one (1) vote for each Detached Lot owned by Such Class B Member. When the Class C Membership terminates, Declarant shall be entitled to one (1) vote for each Lot owned. Only one (1) vote is entitled to be cast for each Lot, regardless of the number of Owners thereof and fractional voting is prohibited;

Class C. The Class C Member is the Declarant. During the existence of the Class C Membership, the Class C Member is entitled to three (3) votes for each Lot and parcel owned by the Declarant. The foregoing allocation of votes is in recognition of the fact that The Properties likely will be developed in phases and that there may be times during development of The Properties when Declarant owns few, if any Lots. The Class C Membership shall terminate at the end of the Declarant Control Period, at which time the Declarant shall become a Class A and/or B Member.

Section 3. Additional Class of Membership. Any Supplemental Declaration that annexes Additional Property to this Declaration as provided herein may create one or more additional classes of membership in the Association, with voting rights identical to or different from those of existing Members (other than Declarant) of the Association, and with annual and special assessments for such additional Members that are identical to or different from those applicable to existing Members (other than Declarant) of the Association. Provided, however,

and notwithstanding the foregoing, no such additional class of membership shall have voting rights greater than the voting rights of Class A and B Members who are Owners of attached and detached Lots, unless the annexation has been approved by the affirmative votes of sixty-seven percent (67%) or more of the votes cast by the Class A and B Members present at a Duly called meeting of the Association.

Section 4. Voting

(a) When any portion of The Properties entitling the Owner thereof to membership as a Class A or B Member is owned of record in the name of two (2) or more Persons, their acts and presence with respect to voting, written consents, and quorum requirements shall be as follows:

(1) If only one (1) of the Owners votes, in person or by proxy, then the vote of that Owner shall bind all of the Owners;

(2) When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot(s) shall be exercised as they among themselves determine; however, in no event may more than one vote be cast with respect to any one Lot owned and in no event shall fractional votes be allowed;

(3) The presence at a meeting, in person or by proxy, of one or more of multiple owners of a Lot shall be sufficient for quorum purposes with respect to the vote or votes attributable to such Lot or Proposed Lots; and

(4) The principles of this paragraph shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

(b) Except when this Declaration, other Governing Documents, or applicable Legal Requirements specifically require a higher percentage or require the applicable percentage to be calculated based on the number of votes "entitled to be cast": (i) the vote of a "simple majority" (defined as more than 50%) of the total number of votes cast by the Members present at a Duly called meeting of the Association shall be the act of the Members with respect to the matter subject to the vote; and (ii) when matters are required to be voted upon by each Class of membership (or by a specific Class or portion of a specific Class of Members - for example, with respect to Limited Sub-Association Common Property), the vote of a simple majority of the total number of votes cast by the Members of that Class (or applicable portion of that Class) present at a Duly called meeting of the Association shall be the act of that Class (or applicable portion of that Class) of Members with respect to the matter subject to the vote; provided, however, during, the Declarant Control Period, the written consent of the Declarant shall be

required to make effective any matter that affects the rights or obligations of the Declarant under this Declaration.

(c) Unless otherwise specifically provided in this Declaration, other Governing Documents, or any applicable Legal Requirements, any matter that may be adopted by the vote of Members may be adopted by the written consent of the Members or applicable Class of Members (or portion thereof, subject to the following: (i) the foregoing rules governing voting when there is more than one Owner of a particular portion of The Properties applies to written consents; (ii) the majority or other percentage required for adoption by voting is applicable to adoption by written consent, except that, with respect to written consents, the percentage shall be determined in relation to the number of votes that the Members, or applicable Class of Members (or portion thereof, would be entitled to cast and (iii) the date on which the last required Member signs the written consent is the date for determining whether or not the required percentage of Members has consented.

(d) The voting rights of an Owner may be assigned by the Owner to the Owner's lessee only by written instrument and only with respect to the portion of The Properties actually leased and occupied by the lessee.

(e) Payment of special assessments or any other assessments or charges shall not entitle Class A or B or C Member to any votes in addition to those specified in this Article.

Section 5. Directors.

(a) The Association shall be governed by a Board consisting of a number of Directors determined in accordance with the Articles and Bylaws of the Association. During the Declarant Control Period the Declarant shall elect all directors. Thereafter, at the first annual meeting of the membership an equal number directors shall be elected by the Class A and Class B Membership as set forth in the By-Laws.

Section 6. Quorum and Notice Requirements. A quorum shall be required for all meetings of the Members of the Association. Unless otherwise specifically provided in this Declaration, the quorum requirements and notice requirements for meetings of the Association shall be as set forth in the Bylaws or, if not addressed in the Bylaws, in accordance with applicable Legal Requirements.

Section 7. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy which is authorized in writing, and meets the applicable requirements of the Governing Documents and Legal Requirements.

Section 8. Ballots by Mail. When directed by the Board, in its sole discretion, a statement of certain motions to be introduced for vote of the Members at an annual or special meeting of the Association, and a ballot on which each Member may vote for or against each such motion, shall be sent with the notice of the annual or special meeting at which such vote is to be held. The form of the ballot and requirements for execution and presentation thereof, not inconsistent with this Declaration, shall be as determined by the Board. Each ballot properly executed and presented at the applicable meeting shall be counted in calculating the quorum requirements for the meeting, but such ballots shall not be counted in determining whether or not a quorum is present to vote on motions or other matters that do not appear on the ballot. With respect to any such ballot, the Board shall establish the rules for withdrawal or revocation of the ballot, which rules shall clearly be set forth on the notice of the meeting that accompanies any such ballot.

ARTICLE VI

ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of the Lien and Personal Obligation for Assessments. Subject to the terms of this Declaration, each Owner of a portion of The Properties (except for Exempt Property), by execution of this Declaration or by acceptance of a deed or other conveyance, whether or not it shall be so expressed therein, is hereby deemed to consent and agree to pay to the Association (or to any Person which may be designated by the Association to receive such monies on behalf of the Association) assessments and other charges as follows: (i) annual assessments; (ii) working capital assessment; (iii) special assessments for Capital Improvements or other matters as set forth herein; (iv) special individual assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to Maintain adequately that Owner's portion of The Properties, or for such other purposes as stated herein; and (v) fines, late payment penalties and interest on unpaid assessments and other charges imposed under authority contained in the Governing Documents, and, in addition to such assessments and other charges, to pay all costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges; and (vi) limited assessments levied on certain lots to pay for Limited Common Expenses associated with Limited Neighborhood Common Property; and (vii) Limited assessments levied on certain lots to pay for Limited Common Expenses associated with Limited Neighborhood Common Property. All of the assessments and other charges shall be established and collected as hereinafter provided. All of the assessments and other charges, together with the costs of collection thereof, shall be a charge and continuing lien on the portion of The Properties owned by the Owner against whom they are assessed or charged from the time of the filing of a Lien in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such portion of The Properties at the time when the assessment or other charge first became applicable. An Owner's personal obligation for payment of assessments and other charges incurred during the time such Owner owned a portion of The Properties shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner. No Owner shall be exempt from liability for any assessment provided for herein by reason of

non-use of the Common Property or the portion of The Properties owned by the Owner against whom the assessment or other charge is made, or waiver of use, or abandonment of that Owner's portion of The Properties, or temporary unavailability of the use or enjoyment of the Common Property. The obligation of an Owner to pay all assessments and other charges under this Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect attorney fees in any action or proceeding to enforce or collect payment of any assessment or other charge.

Section 2. Liability for Assessments After Change in Membership Status. No Owner shall be relieved of or released from, the obligation to pay assessments and other charges under this Declaration because of any resignation or attempted resignation by such Owner of membership in the Association, or because of any expulsion of such Owner from membership in the Association, or because of any suspension of such Owner's membership in the Association.

Section 3. Nature, Purpose and Use of Assessments. The assessments shall be used by the Association for any one or more of the following: (i) to pay the Common and/or Limited Common Expenses; (ii) to perform the functions or provide the services required or authorized of the Association pursuant to this Subdivision Declaration and any Supplemental Declaration(s) (if applicable); and (iii) to implement, administer and enforce the terms and provisions of this Subdivision Declaration and of any Supplemental Declaration(s) (if applicable), as the Board determines to be in the best interests of the Association or its Members.

All assessments and other charges collected by the Association, including penalties and interest thereon, shall be the separate property of the Association. As assessments and other charges are paid to the Association by any Owner, such funds may be commingled with assessments and other charges paid to the Association by other Owners. No Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer, such Member's interest in the assets of the Association, except as an appurtenance to the portion of The Properties owned by such Member. When any Owner shall cease to be a Member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association or any portion thereof which may have been paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner.

When the Board determines that it is necessary or desirable to make an expenditure that affects, or provides a benefit for, or complies with a requirement in this Subdivision Declaration with respect to, the Limited Sub-Association Common Property, the funds for such expenditures shall come from the additional assessments collected from the Owners of those portions of The Properties located in the particular phase, section or subdivision in The Properties to which such Limited Sub-Association Common Property is related.

Section 4. Maximum Annual Assessment and Annual Assessment.

(a) The maximum annual assessment for the calendar year beginning January 1, 2003, and for successive calendar years thereafter shall be established by the Board of Directors subject to this Article VI. Within thirty (30) days after adoption of the yearly budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification to the budget. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at such meeting, and the budget is ratified unless at that meeting the Owners entitled to exercise fifty-one percent (51%) of the votes in the Association reject the budget. In no event may the Board or membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

(b) Beginning with the calendar year commencing on January 1, 2004, unless otherwise determined by the Board as allowed herein the maximum annual assessment shall automatically increase each calendar year by an amount equal to the greater of (i) ten percent (10%) of the maximum annual assessment for the immediately preceding calendar year, or (ii) the amount of the maximum annual assessment for the immediately preceding calendar year multiplied by the percentage increase reflected in the Consumer Price Index-U.S. City Average, All Items (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) then in effect or such other index as may be the successor to said Consumer Price Index, for the twelve month period ending the immediately preceding July 1. Provided, however, for each year commencing with the calendar year 2000, the Board, in its sole discretion by majority vote, may elect to provide for no increase in the maximum annual assessment, or may provide for an increase in the maximum annual assessment in an amount less than the amount by which it would automatically increase as provided herein. However, during the Declarant Control Period, any during the period of time any outstanding loan balance is owed to the Declarant, without the written consent of the Declarant, the Board shall not reduce the annual assessments. Further provided, however, if the Board provides for no increase in the maximum annual assessment or provides for an increase less than the amount by which it would automatically increase as provided herein, the Board may at any time increase the maximum annual assessment up to the maximum amount to which it would have increased automatically as provided herein. Any such supplemental annual assessment shall be proportional among the Property Classifications subject to assessment (for example, if the supplemental annual assessment for a Lot is equal to 10% of its maximum annual assessment, then the supplemental annual assessment for a

Proposed Lot shall be equal to 10% of its annual assessment). The amount finally determined as the maximum annual assessment for a calendar year shall be the amount on which the increase for the subsequent calendar year(s) could have been based.

(c) From and after January 1, 2004, the maximum annual assessment for any calendar year may be established at an amount higher than the amount established automatically or by the Board as provided herein, by the affirmative vote by each class of membership of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a Duly called meeting of the Association for which notice of the meeting included notice of the proposal to increase the maximum annual assessment. Further provided, the provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken incident to a merger or consolidation in which the Association is authorized to participate under the Governing Documents or any Legal Requirement.

Section 5. Commencement of Assessments; Change in Assessment Category for Purposes of Assessments. Annual assessments commence Assessment Categories become subject to being assessed for special assessment, and annual assessments, and subject to Property classifications; assessments are applied to assessment categories as follows:

(a) an Undeveloped Lot first becomes subject to annual and special assessments as a Lot on the first day of the calendar month immediately following the month in which said Lot is conveyed by the Declarant.

(b) When an annual assessment commences in any month other than January, the amount of the annual assessment for that calendar year shall be determined by multiplying the amount of the applicable annual assessment by a fraction whose numerator is the number of months in that calendar year including and following the month in which the annual assessment commences or changes, and whose denominator is twelve (12).

(c) Notwithstanding anything to the contrary appearing herein; the Builder of a residence on a Lot shall be assessed at a rate equal to one-quarter (1/4) of the applicable annual assessment until the residence is sold to another person or entity other than the Declarant or another Builder.

Section 6. Preparation of Operating Budget. Not less than thirty (30) days before the beginning of each calendar year, commencing for the year 2003, the Board shall adopt annual operating budget(s) for the Subdivision Association, containing an estimate of the total amount believed to be necessary to pay the Common and Limited Common Expenses for the ensuing calendar year, including such reasonable amounts as the Board deems necessary to provide working capital (available for day-to-day operating expenses and otherwise uncommitted for specific expenses), reserves for contingencies, and reserves for replacement of Common and

Limited Association Common Property. The annual operating budget(s) shall constitute the basis for establishing the annual assessment. The Board shall make the annual operating budget, or a summary thereof, available for inspection by the Members. Provided, however, failure of the Board to adopt an annual operating budget, or failure of the Board to adopt an annual operating budget within the specified time limitations, shall not invalidate any subsequently adopted annual operating budget and shall not relieve or release any Owner from the obligation to pay assessments. Further provided, until such time as the Board has adopted the new annual operating budget, the annual operating budget for the immediately preceding calendar year shall remain in effect (but the newly adopted annual operating budget shall be retroactive to January I of the applicable calendar year).

Section 7. Establishing the Annual Assessment. The Board shall establish the amount of the annual assessment for each calendar year at least thirty (30) days in advance of the beginning of such year, and, if the amount of the annual assessment changes from the amount for the current year, the Board shall cause written notice of the new annual assessment to be sent to at least one of the Owners of each portion of The Properties subject to the assessment, but failure to send such notice shall not invalidate any change in the annual assessment. The failure of the Board to establish the amount of any annual assessment as required herein shall not constitute a violation, waiver or modification of the provisions of this Declaration, or a waiver of the Board's right to establish the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment (but when established, the amount of the new annual assessment shall be retroactive to January 1 of the applicable calendar year.

Section 8. Collection of Assessments; Due Dates; Penalties for Late Payment.

(a) Annual and special assessments may be collected on a monthly, quarterly, annual or other basis, as determined from time to time by the Board. The billing schedule shall be the same for all portions of The Properties in a particular Assessment Category; provided, however, the Board, in its sole discretion, may establish different schedules for billing of annual and special assessments due from Owners of different Assessment Category. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay annual and/or special assessments earlier than the due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Owners. Written notice of annual assessments shall be sent to every owner subject thereto at least fifteen (15) days in advance of each annual assessment period.

(b) Subject to any limitations contained in this Subdivision Declaration, other Governing Documents, or any applicable Legal Requirement, the Board has the authority at any time and from time to time to establish the due dates, interest rate on unpaid amounts, and penalties for late payment of annual and special

assessments and other charges. In the event of default in the timely payment of any assessment or other charge, the defaulting Owner shall be obligated to pay interest on the unpaid balance thereof from and after the due date at the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest lawful rate under applicable Legal Requirements, or (iii) the amount, if any, established by the Board, together with all costs and expenses of collection, including reasonable attorney's fees. The Board shall commence the foreclosure of the lien against any property for which assessments are not paid within sixty (60) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(c) The Board may at any time and from time to time authorize a management company or other billing agent, on behalf of the Association, to bill and collect all assessments and other charges payable under this Declaration.

Section 9. Special Assessments for Improvements, Additions, and Emergencies. In addition to the annual assessments authorized herein, and subject to the other requirements of this Declaration, at any time and from time to time the Association may levy a special assessment for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

(1) Construction, reconstruction, alteration, repair, replacement or removal of a capital improvement in or on the Common or Limited Property, including private streets, fixtures and personal property related thereto;

(2) Association Common Property or Limited Neighborhood Common Property;

(3) To provide for the necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein;

(4) To repay any loan made to the Association to enable it to perform the functions and provide the services required or authorized herein.

(5) In the event of an Emergency, a special assessment may be necessary when, in the sole determination of the Board of Directors, there is potential danger or damage to persons or property. Such emergency special assessments may be utilized to pay for preventative, protective, stabilizing or remedial construction, reconstruction, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to hurricanes, floods, tornadoes, fires or other naturally occurring phenomena. Emergency special Assessments shall be collectible from all Subdivision Association Members in such manner as the Board of Directors shall determine.

(6) The acquisition of any properties pursuant to Section 11 of this Article.

The proportion of each special assessment to be paid by the Owners of the various Assessment Categories shall be the same as their respective proportions of the annual assessments applicable for the calendar year during which the special assessment is levied. Such special assessments are subject to approval by the affirmative vote of each class of membership of sixty-seven percent (67%) or more of the votes cast by the members of that class present at a Duly called meeting of the Association for which notice of the meeting included notice of the proposed special assessment. Notice and quorum requirements for Special Assessments shall be as set forth in Article XIV, Section 4 (Section 4 (d) and (e) of this Declaration.

Section 10. Certification of Assessments Paid. The Association (or any Person employed by the Association to assist in the management of the Association and collection of assessments and authorized by the Association to issue such certificates), upon demand and payment of a reasonable charge or fee established by the Association, shall furnish to any Owner liable for same, or to any holder of a first lien deed of trust on the portion of The Properties owned by such Owner, or to an attorney who represents the Owner or a prospective purchaser of such portion of The Properties, or to any other Person approved by the Board, a certificate signed by an officer of the Association (or the Person or an officer, partner or agent of such Person having authority to issue such certificate) setting forth whether or not the assessments owed by such Owner have been paid. A properly executed certificate of the Association (or authorized Person) shall be conclusive evidence of payment or partial payment of any Assessment therein stated as having been paid or partially paid.

Section 11. Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of the Owners of the portion of The Properties against whom they are assessed or charged. Any assessment or other charge not paid on or before the due date shall be delinquent and, together with penalty and interest charges as provided in this Declaration, plus the costs of collection (including reasonable attorney's fees), shall be a charge and continuing lien on the portion of The Properties (and Improvements thereon) owned by the defaulting Owner. Except as otherwise provided in this Declaration, the lien shall be superior to all other liens and charges against such portion of The Properties and Improvements thereon. The Board shall have the power, in its sole discretion, to subordinate the lien to any other lien. To evidence the lien, the Association may prepare and record in the Registry a written notice of lien setting forth the amount of the unpaid assessment or other charge, the name of the Owner, and a description of the portion of The Properties owned by such Owner, or the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. Subsequent to the recordation of such notice, the lien may be enforced by the Association by foreclosure of the portion of The Properties owned by the defaulting Owner in the manner required by any Legal Requirement (or, in the absence of any Legal Requirement, in like manner as a deed of trust with power of sale), or the Association may institute suit against the Owner personally obligated to pay the assessments, or the lien may be enforced by judicial foreclosure, or the Association may pursue one or more of the foregoing remedies and/or may seek any other available remedy or relief In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on and purchase the portion of The Properties subject to the foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The remedies

against a defaulting Owner and such Owner's portion of The Properties are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

Section 12. Subordination of the Lien to Mortgages. The Lien of the assessments and charges provided for herein shall be subordinate and inferior to the lien of any first lien mortgage on the applicable portion of The Properties that secures an indebtedness owed to the Declarant or any Mortgagee, and shall be subordinate and inferior to the lien of any second lien mortgage on such portion of The Properties that secures an indebtedness to Declarant for a portion of the purchase price thereof, provided, however, that such subordination shall apply only to the assessments and charges which have become due and payable prior to the sale (whether public or private) of such portion of The Properties pursuant to the terms of any such mortgage or prior to transfer of title by deed in lieu of foreclosure. Such sale shall not relieve any new Owner of such portion of The Properties from liability for the amount of any assessments or charges becoming applicable after the new Owner acquires title, nor from the Lien arising therefrom. Upon transfer of title to such portion of The Properties by foreclosure or deed in lieu of foreclosure, The Association's lien on such portion of The Properties for assessments or other charges applicable prior to the time such title transfer occurs shall be discharged provided, however, if the proceeds of any foreclosure sale exceed the total amount due under the mortgage, the amount of the excess, up to and including the amount required to satisfy the Association's lien, first shall be paid to the Association.

Section 13. Exempt Property. All Exempt Property is exempt from the assessments, charges and liens established pursuant to this Declaration.

Section 14. Reserve Funds. From the annual assessments the Board shall establish and Maintain reasonable reserve funds for working capital, contingencies and replacements of Common Property, which expenditures shall be Common Expenses. Reserves for Limited Association Common Property shall be established and accounted for only out of the additional annual assessments paid by the Owners of the portions of The Properties associated with such Limited Association Common Property. With respect to each separate reserve funds account:

(a) Extraordinary expenditures not originally included in the annual operating budget, including (i) major rehabilitation or repair of the Association Common Property, (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, or (iii) the initial costs of any new service to be performed by the Association, first shall be charged against the appropriate reserves. Except for expenses of normal and routine maintenance shown in the annual operating budget, all expenses for repair or replacement of the Common or Limited Association Common Property shall be charged first against appropriate reserves.

(b) If reserve funds become excessive, as determined by the Board, the Board may adjust the reserve funds by reallocation to other annual operating budget items or by applying excess amounts as credits against annual assessments, such credits to be applied in the same proportions as the proportions of annual assessments due and payable for the calendar year in which such credits are applied.

Section 15. Working Capital Assessment. In addition to all other assessments due and payable under this Declaration with respect to each Lot, the first Owner who acquires title to a Lot from the Declarant or a Builder (it being the intention of this Declaration that the working capital assessment not be paid by a Builder at the time the Builder acquires a Lot or unsubdivided parcel from the Declarant) shall pay to the Association at the time of the closing of that purchase a "working capital assessment" in an amount equal to one-sixth (1/6) of the then applicable annual assessment. The purpose of the working capital assessment is to provide necessary working capital and initial funding for general reserves. Amounts paid as working capital assessments shall be in addition to annual assessments, special assessments, and additional assessments for Limited Association Common Property, and the working capital assessment may be enforced and collected and shall constitute an assessment lien in the same manner as annual and special assessments against the first Owner and the Lot. It is the express intention of this Section that only one working capital assessment be assessed against each Lot.

Section 16. Additional Assessments for Limited Common Property. Declarant reserves the right, by recordation of Supplemental Declarations or other documents, to subject portions of The Properties located in one or more phases or sections in The Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of, and addition to, Limited Sub-Association Common Property, including, but not limited to, any one or more of the following: (i) private streets; (ii) exterior maintenance of improvements and (ii) landscaping, signs and decorative features.

All of the provisions of this Declaration relating to annual and special assessments shall apply to the additional annual and special assessments for Limited Sub-Association Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Sub-Association Common Property are assessed only against those Owners of portion of The Properties associated with such Limited Sub-Association Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Limited Neighborhood Common Property shall be established in the Supplemental Declaration or Subdivision Declaration that creates or establishes that Limited Neighborhood Common Property; and (iii) the actual additional annual and special assessments may vary from phase to phase or section to section; and (iv) the additional annual and special assessments for portions of The Properties in any particular phase or section of The Properties shall be used exclusively in connection with the Limited Sub-Association Common Property associated with that phase or section or subdivision.

Section 17. Declarant's Obligation for Payment of Annual and Special Assessments. During the Declarant Control Period, the Declarant shall pay annual and special assessments for all vacant recorded Lots at an amount equal to one-half (1/2) of the applicable assessment. These assessments may be enforced against Declarant and collected by the Association in the same manner as annual assessments applicable to other Owners.

In addition to payment of the foregoing assessments, during the Declarant Control Period the Declarant shall fund all annual operating budget deficits, if any. The Declarant's deficit

funding obligation may be satisfied with in-kind payments of services or materials. The Declarant's deficit funding obligation does not include any expenses that the Association is unable to meet because of nonpayment of any assessment by Owners other than Declarant, or because of unusual or extraordinary expenses not included in the annual operating budget. The deficit funding obligation of the Declarant may be enforced against the Declarant and collected by the Association in the same manner as annual assessments applicable to other Owners.

ARTICLE VII

INSURANCE

Section 1. Authority and Responsibility to Purchase; Notice.

(a) The Association shall: (i) purchase insurance policies relating to the Association Common Property and the activities of the Association; (ii) adjust all claims arising under such policies; and (iii) sign and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board relating to the Association Common Property or Limited Common Property shall be a Common Expense or a Limited Common Expense, as appropriate. Except in instances in which applicable legal requirements required such coverage [for example, see Raleigh City Code 10.3073 (b)(3)] neither the Board, a community manager, nor the Declarant, shall be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure: (i) if such failure is due to the unavailability of such coverages from reputable insurance companies; (ii) if such coverages are available only at unreasonable cost as determined by the Board; or (iii) if the Association's insurance professionals advise that any of the coverages or endorsements required under this Article are unnecessary. Notwithstanding the foregoing, the Association shall procure liability insurance as set forth in Section 3 herein. Exclusive authority to negotiate losses under policies purchased by or on behalf of the Association shall be vested in the Board or its authorized representative. The Board shall promptly notify the Owners of material adverse modifications, lapses, or termination of, insurance policies obtained on behalf of the Association unless comparable replacement policies have been obtained and there has been no lapse in coverage.

(b) Each such policy shall provide that:

(1) The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board, the community association manager, any Owner or any member of an Owner's household;

(2) The policy shall not be canceled, invalidated or suspended due to the conduct of any Owner, or such Owner's tenant or such Owner's (or tenant's) household members, guests, employees, agents or invites, or of any director, officer or employee of the Board, or the association manager, without a prior demand in

writing that the Board or the community manager cure the defect and neither shall have so cured such defect within thirty (30) days after such demand; and

(3) The policy may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Board, the association manager, except cancellation for non-payment of premium shall require only ten (10) days notice.

(c) All policies or insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

(d) The deductible or retained limit (if any) on any insurance policy purchased by the Association shall be a Common Expense (or a Limited Common Expense, as appropriate); provided, however, that the Association may assess any deductible amount necessitated by the misuse or neglect of an Owner or such owners family members, agents, contractors, lessees, guests, or contract purchasers against the portion of The Properties owned by such Owner, and may enforce and collect same in the same manner as an annual assessment.

(e) During the Declarant Control Period the Declarant shall be protected by all such policies as an Owner with respect to all portions of The Properties owned by the Declarant, but not with respect to any negligence of the Declarant, its employees, and contractors, in their activities as the developer of The Properties.

Section 2. Physical Damage Insurance.

(a) The Board shall obtain and Maintain a "Special Form" form policy of insurance including fire damage, vandalism, malicious mischief, sprinkler leakage (if applicable), cost of demolition, debris removal, and water damage insuring any Improvements located on the Common Property or Limited Sub-Association Common Property owned by the Association (including without limitation any floor coverings, fixtures and appliances), together with all air conditioning and heating equipment and other service machinery contained therein and covering the interests of the Association, in an amount equal to one hundred percent of the then current full insurable replacement cost thereof (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined periodically by the Board with the assistance of the Association's insurance professionals). The Board shall also obtain and Maintain appropriate coverage on personal property owned by the Association.

(b) Each such policy shall also provide:

(1) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made by the Board not to do so;

(2) the following endorsements (or equivalent): (1) "no control " (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Owner or the agents of either when such act or negligence is not within the control of the insured or the Owners collectively, nor by any failure of the insured, or the Owners collectively, to comply with any warranty or condition with regard to any portion of the Property over which the insured, or the Owners collectively, have no control; (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction" or "inflation guard"; (v) "replacement cost" or a "guaranteed replacement cost"; and (vi) "agreed amount" or "elimination of co-insurance" clause;

(3) that any "no other insurance" clause expressly exclude individual Owner's policies from its operation so that the physical damage policy purchased by the Association shall be deemed primary coverage and any individual Owner's policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and Maintained by the Association hereunder provide for or be brought into contribution with insurance purchased by Owners or Mortgagees, unless otherwise required by law;

(4) such deductibles as to loss, but not coinsurance features, as the Board, in its sole discretion, deems prudent and economical; and

(5) to the extent a policy includes any Dwelling located on any Lot, such policy includes the standard Mortgagee clause.

(c) Certificates of physical damage insurance signed by an agent of the insurer, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least ten (10) days prior to any lapse, material modification or cancellation of the then current policy.

Section 3. Liability Insurance. The Board shall obtain and Maintain commercial general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the Board may from time to time determine (subject to the minimum coverage required herein), insuring the Association, each director and officer, the community association manager, the Owners and the employees of the Association against any liability to the public or to any Owner or such Owner's tenant and such Owner's (or tenant's) household members, guests, employees, or agents arising out of, or incident to the ownership or care, custody, control and use of the Common Property, or legal liability arising out of employment contracts of the Association. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross-Liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest"

endorsement which shall preclude the insurer from denying liability coverage to an Owner because of negligent acts of the Association or of another Owner. The Board shall review such limits once each year, but in no event shall such insurance be less than one million dollars ($1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. "Umbrella" liability insurance in excess of the primary limits may be obtained in reasonable amounts as determined by the Board.

Section 4. Other Insurance. The Board shall obtain and Maintain:

(a) adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, including any association manager and volunteers. If the Association has delegated some or all of the responsibility for handling funds to a community association manager, such association manager shall be covered by its own fidelity insurance; however, the Board may determine to purchase additional fidelity coverage for the association manager as well. Such fidelity insurance (except for fidelity insurance obtained by the association manager for its own personnel) shall: (1) name the Association as an obligee; (ii) be written in an amount not less than one-fourth the total annual assessment for Common and/or Limited Common Expenses or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by a majority of the Mortgagees or governmental regulations, flood insurance on the Common or Limited Association Common Property in accordance with the then applicable regulations for such coverage;

(c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(d) if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form in an amount not less than fifty thousand dollars ($50,000.00) per accident per location;

(e) directors and officers liability insurance in an amount not less than one million dollars ($1,000,000.00); and

(f) such other insurance: (i) as the Board may determine; (ii) as may be required with respect to the Additional Property by any Supplemental Declaration, or (iii) as may be requested from time to time by the affirmative vote cast by a majority of the Members present at a Duly called meeting of the Association.

Section 5. Insurance on Lots. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Improvements located on such Owner's Lot and such Owner's personal liability. No Owner shall acquire or Maintain insurance coverage on the Sub-Association Common Property insured by the Association so as to: (i) decrease the amount which the Association may realize under any insurance policy Maintained by the Association; or (ii) cause any insurance coverage Maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner. No Owner shall obtain separate insurance policies on the Common Property.

ARTICLE VIII

REPAIR AND RESTORATION OF THE PROPERTIES

Section 1. When Required.

(a) Association Common Property. Except as otherwise provided herein, if all or any part of any structure located in or on the Common or Limited Association Common Property is damaged or destroyed by fire or other casualty, the Board shall arrange for and supervise the prompt repair, restoration and/or replacement thereof (including all furnishings and fixtures). Unless repair is required by any applicable Legal Requirement, if the damage results in a diminution in value equal to or less than twenty percent (20%) of the estimated value of the structure immediately prior to the damage, the Board may elect not to repair, restore or replace the damaged structures. Otherwise, any decision not to repair, restore or replace shall be made only by the vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a Duly called meeting of the Association (which vote also must be have the affirmative vote of a majority of the Members other than the Declarant), or may be made by the Board if the insurance proceeds, plus the applicable reserve funds, are insufficient to cover the costs of the repair, replacement or restoration. If the damage is not repaired, restored or replaced, then the Board shall remove all remnants of the damaged structures and restore the site to an acceptable condition compatible with the remainder of the Common or Limited Sub-Association Common Property, and the balance of any insurance proceeds received on account of such damage shall be placed in the appropriate reserve account.

(b) Lots and Unsubdivided Land. If a building or other Improvement located upon a Lot or Unsubdivided Land is damaged or destroyed, the Owner thereof shall restore the site either: (i) by repairing, restoring or replacing such building or other Improvement; or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of The Properties. Such work must be commenced within six months after the commencement and substantially completed within twelve months after the commencement. Any repair, replacement or restoration that differs in any material respect from the approved

Plans for the damaged Improvements must first be approved by the Architectural Approval Committee in the manner required herein.

Section 2. Procedure for Common Property.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any structures in or on the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repair, restoration or replacement (including furnishings and fixtures) to a condition as good as that existing before the damage occurred. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Plans and specifications. Any such repair, replacement or restoration shall be substantially in accordance with the original construction or condition of the damaged structures, subject to any modifications required by changes in applicable Legal Requirements, and use of contemporary building materials and technology to the extent feasible; provided, however, other action may be taken if approved by sixty seven (67%) percent of the Members of the Association in a Duly called meeting.

Section 3. Surplus and Deficiency of Funds for Common Property Repair.

(a) Surplus. The first monies disbursed in payment of the cost of repair, restoration or replacement of the Improvements in or on Common Property shall be from insurance proceeds, if any. If any surplus funds remain after payment of the costs of all repair, restoration or replacement, such funds shall be paid to the Association and shall be placed in the appropriate reserve account.

(b) Deficiency. If the insurance proceeds plus applicable reserve funds are insufficient to repair, restore or replace the damaged structures in or on Common Property, a special assessment to cover the insufficiency may be levied by the Association in the manner provided in this Declaration.

Section 4. Condemnation.

(a) Definitions. For the purposes of this Article, "Taking" means an acquisition of all or any part of the Common Property or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain, or a change of street grade caused by the action of the condemnor affecting access to or from the Common Property or any part thereof so severely as to amount to condemnation.

(b) Taking of Common Property. If there is a Taking of all or any part of the Common Property, then the Association shall notify the Owners, but the Board

shall act on behalf of the Association in connection therewith and no Owner shall have any right to participate in the proceedings incident thereto. The award made for such Taking shall be payable to the Association, to be disbursed as follows. If the Taking involves a portion of the Common Property on which Improvements have been constructed, then the Association shall restore or replace such structures so taken on another portion of the Common Property, to the extent land is available therefor, in accordance with plans approved by the Board, unless within sixty (60) days after such Taking the Declarant, during the Declarant Control Period, or, following the end of the Declarant Control Period, the Owners by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a Duly called meeting of the Association, determine otherwise. To the extent that the takings involve Limited Neighborhood Common Property, and it is determined that the Limited Neighborhood Common Property is not to be restored or replaced, then the proceeds for such taking shall be credited pro-rata against annual assessments due and payable to Owners of those portions of The Properties associated with the Limited Common Neighborhood Common Property taken. Except as otherwise provided, the provisions of this Article regarding insurance proceeds, reserve funds, and special assessments, following damage or destruction to Improvements in or on the Common Property shall apply.

ARTICLE IX
ARCHITECTURAL APPROVAL

Section 1. The Architectural Control Committee ("ACC") shall consist of three (3) or more persons designated by the Declarant; however, one of said Members shall be an Owner. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable from executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the ACC, whereupon the Board shall appoint three(3) or more persons as the members of the ACC. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any real property subject to this Declaration or subject to annexation to this Declaration.

Section 2. Purpose. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Properties and of technological advances and environmental values. In order to implement the purpose of those covenants, the Declarant may establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations and Landscape Guidelines as defined hereinafter, and which shall be binding on all Owners within the Properties.

Section 3. Controls.

(a) No building, fence, outside lighting, hedge, wall, walk, pool, clothesline, dog house, deck, trellis or other structure shall be erected, placed, or altered, nor shall a building permit application for such improvement be made on any Lot in Properties until the proposed building location, specifications, exterior materials and color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas, exterior shape, size and height) shall have been approved in writing by the Declarant, or by the ACC if such review responsibility has been delegated to the ACC by the Declarant. In addition, the Declarant may require prior written approval of a landscape plan. The Declarant further reserves the right to promulgate and amend from time to time architectural standards and construction specification (hereinafter referred to as the "Architectural Standards and Construction Specifications") for specific neighborhoods and areas or for all properties within the Properties and such Architectural Standards and construction Specifications shall establish, define, and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or with the Properties, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design, and construction technique. Refusal or approval of plans, location, exterior color or finish, or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Declarant or the ACC if so delegated by the Declarant. One (1) copy of all plans and related data shall be furnished the Declarant (or ACC if applicable) for its records. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Declarant (or ACC if applicable) of written demand for approval, the provisions of this paragraph shall be thereby waived. Neither the ACC nor the Members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgement, negligence except for gross negligence, nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

(b) In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure within the confines of the Lot, and to assure that structures will be located with regard to the topography of the Properties, taking into consideration of the location of large trees and other aesthetic and environmental consideration, the Declarant reserves the right to control absolutely and solely to decide (subject to the provisions of the Zoning Ordinances of the City of Raleigh) the precise site and location of any building or structure on any Lot in the Properties for reasons which may in the sole and uncontrolled discretion and judgement of the Declarant seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on any adjacent Lot.

Detached Dwellings Units shall contain a minimum of 1,150 square feet of heated area and attached dwelling units shall contain a minimum of 1,000 square feet of heated area.

(c) Each Owner shall provide paved (concrete or asphalt) space for the parking of automobiles or other vehicles off public street prior to the occupancy of any building or structure constructed on said Lot in accordance with reasonable standards established by the Declarant. On-street parking shall only be as allowed in an applicable Supplementary Declaration, or as designated by Declarant.

(d) Except as may be required by legal proceedings, no sign shall be erected or maintained on any Lot by anyone including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor, until the proposed sign size, color, content, number or signs, and location of sign(s) shall have been approved in writing by the Declarant, Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Lot in the Properties.

The Declarant its agent shall have the right, whenever there shall have been placed or constructed on any Lot in the Properties any sign which is in violation of these restrictions, to enter immediately upon such Properties where such violation exists and summarily remove the same at the expense of the Owner.

(e) It shall be the responsibility of the Owner, tenant, contractor, or subcontractor to keep the lawn or landscaped areas of a Lot mowed and trimmed, and to prevent the development of any unclear, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Properties, the neighborhood as a whole, or the specific area. The Declarant and its agents shall have the right to enter upon any Lot for the propose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until fifteen (15) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perfom the corrective action with said fifteen (15) day period; provided, however, tha should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation of the part of the Declarant to take any such corrective action.

(f) No mailbox shall be erected or maintained on any Lot until the proposed mailbox design, color, and location have been approved in writing by the Declarant. Refusal or approval of design, color, or location may be based by the Declarant upon the ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Declarant. The Declarant further reserves the right to establish

uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Lot in the Properties.

(g) Outside clotheslines shall not be permitted upon any Lot at locations where they can be viewed from any street or any resident of the Properties.

(h) All garbage receptacles, containers and enclosures shall be located at the rear of the primary structure of the Lot, out of view from any street abutting the Lot.

(i) No fence, wall, hedge or mass planting shall be permitted to extent beyond the minimum building setback line except upon approval by the Declarant or the ACC.

(j) Decorative lawn ornaments, outside and porch furniture shall be approved in writing by the Declarant or the ACC prior to installation or placement on any Lot.

(k) No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not dept or maintained for commercial purposes and further provided that they are dept and maintained in compliance with (i) all laws and ordinances in the State of North Carolina, the County of Wake and the City of Raleigh or its successors, relating thereto; and (ii) such rules and regulations pertaining thereto as the ACC may adopt from time to time. No animal shall be dept or secured by being chained, tied or otherwise attached to inanimate object. If an animal creates offensive sounds such as barking so as to disturb the peaceful enjoyable of the Owner's neighbors, said animal shall not be allowed outside the confines of the improvements located on the Lot except under the physical control of its owner or other person.

(l) Prior to the occupancy of a building or structure on any Lot, proper and suitable provisions for water shall be made by connection with a water system approved by Wake County or the appropriate governmental authority.

(m) The Declarant reserves unto itself, its successors and assigns, and its agents, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, maintain, and use electric, Community Antenna Television, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, in or over those portions of such Properties as may be public conveniences or utilities on, in or over those portions of such Properties as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of a Lot as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Declarant, or (b) such portion of a Lot as may be designated as the site for a building on a plat plan for erection of a building which has been filed with the Declarant and which has been approved in writing by said Declarant. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. The Declarant further reserves the right to

(l) Prior to the occupancy of a building or structure on any Lot, proper and suitable provisions for water shall be made by connection with a water system approved by Wake County or the appropriate governmental authority.

(m) The Declarant reserves unto itself, its successors and assigns, and its agents, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, maintain, and use electric, Community Antenna Television, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, in or over those portions of such Properties as may be public conveniences or utilities on, in or over those portions of such Properties as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of a Lot as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Declarant, or (b) such portion of a Lot as may be designated as the site for a building on a plat plan for erection of a building which has been filed with the Declarant and which has been approved in writing by said Declarant. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. The Declarant further reserves the right to locate wells, pumping stations, siltation basins, and tanks within any Common Area, Limited Common Area or on any Lot designated for such use on the applicable plat of said Properties, or to locate same upon any Lot with the permission of the Owners of such Lot. Such rights may be exercised by any assignee or licensee of the Declarant, but this reservation shall no create any obligation on the part of the Declarant to provide or maintain any such utility or service.

(n) The Declarant reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods, and procedures for landscape management on Specific Properties and such authorized standards, methods, and procedures may be utilized by the Owners of such specified Properties without prior written approval by the Declarant; provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the prior written approval of the Declarant. Approval for the removal of trees located within ten (10) feet of the approval of the Declarant. Approval for the removal of trees located within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Properties. Notwithstanding the foregoing, Declarant reserves unto itself, its successors and assigns, a five (5) foot wide landscape easement abutting each side of all rights-of-ways for installation, improvement and maintenance of landscaping, including but not limited to the planting and removal of shrubs and trees and the installation of walls and planters.

Section 4. Review Board. The ACC shall be composed of at least three (3) but not more than seven (7) Members, all of whom shall be appointed by the Board of Directors. At least one (1) Member of the Association other than the Declarant shall be a Member of the ACC at all times. The ACC will be formed at such time as architectural approval authority is delegated to the

equipment or structures or facilities or impoundments located therein), which may be exercised by the Declarant in its sole discretion, without any obligation to exercise any of same:

(a) Unless waived by the Declarant (during the Declarant Control Period, and thereafter by the Board) and all the providers of utility service who then are utilizing the easement. Perpetual, non-exclusive and alienable easements for maintenance of utilities (including electric, natural gas, telephone and cable television, and related appurtenances and equipment, including wires, poles, pipes, transformer boxes and conduits), storm water drainage equipment and facilities, and soil and water impoundments over, under and across all of the following: (i) portions of The Properties shown as utility easements, drainage easements, sign easements, or landscape easements on plats recorded in the Registry; (ii) the Common Property; (iii) all Unsubdivided Land Parcels, in a ten (10) foot wide area parallel and adjacent to the boundary lines thereof, and (iv) Lots on which Detached Dwelling Units are constructed, in a ten (10) foot wide area parallel and adjacent to the boundary lines thereof. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in this Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or Maintain any such utility, equipment, facility, structure or impoundment of a utility company;

(b) Perpetual, non-exclusive and alienable easements and rights of ingress, egress and regress over and across all private streets within The Properties for access to and from other portions of The Properties and the Declarant Property; and

(c) Perpetual, non-exclusive and alienable easements on all portions of The Properties whose boundaries are Contiguous to a Landscape Easement, Sign Easement for (i) the reasonable over spray of water from any irrigation system serving that Landscape Easement or Sign Easement or any watering of the grass, flowers, trees, shrubs and other plat materials therein and (ii) the reasonable incursion of Maintenance equipment and personnel who are Maintaining the Landscape Easement or Sign Easement; and

(d) The right to subject The Properties to a contract with Carolina Power and Light Company (or other, appropriate utility provider) for the installation of above ground or underground electric cables and lines and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company (or other utility) by each Owner.

The Declarant or other Person who exercises any of the foregoing easements shall Maintain the easement area in a reasonably well-maintained condition, and shall restore any portion of the Properties located outside of the easement area that is damaged by the exercise of the easement to substantially the same condition it was in prior to sustaining such damage.

Section 2. Easements Reserved for the Association. Easements are reserved for the Association as follows (these easements specifically include the right of access to and from the easement area the right to Maintain any equipment, structure, facilities or impoundment located therein and the right to remove any obstruction within the easement area that, in the Association's sole discretion, constitutes interference with the use of the easement or with the maintenance of any equipment or structures or facilities or impoundments located therein) which may be exercised by the Association in its sole discretion, without any obligation to exercise any of same:

(a) A perpetual, non-exclusive and alienable easement over and upon all portions of The Properties to enable the Association to perform its functions and provide the services under this Declaration ; provided, however that any such entry by the Association upon any portion of The Properties shall be made with as minimum inconvenience to the Owner thereof as reasonably practicable, and any damage caused by or resulting from the gross negligence or willful misconduct of the Association's employees, contractors or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate soil erosion controls, a perpetual, non-exclusive easement to enter upon any portion of The Properties, before and after Improvements have been constructed or placed thereon, to Maintain or cause to be Maintained soil erosion control and/or storm water management; provided, however, no exercise of the easement shall unreasonably interfere with any permanent Dwelling or other building constructed on any such portion of The Properties (which Improvements have been approved by the Master Association's Architectural Approval Committee). If the need for storm water management or soil erosion controls results from the construction of Improvements on any portion of The Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of The Properties, the cost of any such work performed by the Association for the purpose of implementing effective and adequate storm water management or soil erosion control shall be assessed against the Owner of the portion of The Properties on which such work has been performed and shall be a lien and be enforceable in the same manner as annual assessments. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of The Properties, prior to exercising this easement the Association shall give an Owner of such portion of The Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If the Owner fails to complete the corrective action by the date specified in the notice, the Association may then exercise this easement.

Subject to the foregoing, in exercising any of the foregoing easements, the Association shall Maintain the easement in a reasonably well-Maintained condition, and shall restore any portion of The Properties located outside of the easement to substantially the same condition it was in prior to sustaining such damage.

Section 3. Easement Reserved for the City and Public Utilities. Perpetual, nonexclusive and alienable easements are hereby reserved and established over all portions of The Properties for the City and for all public utility providers serving The Properties, and their agents, employees and contractors, for the purpose of setting, removing and reading utility meters, Maintaining utility or storm water drainage equipment and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection and fire protection. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times.

Section 4. Easements Shown On Recorded Plats. Declarant, for itself, its successors and assigns (which may include the Association, the City and public utility providers), and in addition to all other easements reserved in this Declaration, hereby reserves perpetual, non-exclusive and alienable easements in the locations and for the purposes shown and indicated on all plats of The Properties recorded in the Registry. These easements specifically include the right of ingress, egress and regress over and upon such easement areas, and the right to Maintain in the easement areas identified on such plats all facilities deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements. The Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same.

Section 5. Easements for Owners.

(a) In compliance with Raleigh City Code Section 10-3073 (b) (8), the Owner of each portion of The Properties on which a Dwelling or other building is constructed or is approved for construction closer than (5) feet to the boundary line of that portion of The Properties (such portion of The Properties hereinafter referred to in this subsection as the "Dominant Property") shall have a perpetual, non-exclusive easement over and upon each portion of The Properties that adjoins each boundary line of the Dominant Property (each adjoining portion of The Properties hereinafter referred to in this Section as "Adjoining Property", with a ten (10) foot wide section of the Adjoining Property adjacent and parallel to the common boundary between the Adjoining Property and the Dominant Property, to be reasonable exercised from time to time for the following purposes:

(1) initial construction of the Dwelling or other building and associated utilities on the Dominant Property (including, without limitation, water lines, sewer lines, electric lines, telephone lines and cable television lines);
(2) additions to the Dwelling or other building and utilities on the Dominant Property; and
(3) Maintenance, repair or restoration of the Dwelling or other building and utilities on the Dominant Property.

Provided, however, if a Dwelling is being constructed or exists on the Adjoining Property at any time the Owner of the Dominant Property desires to exercise the easement, the width of the easement shall be limited to the distance from such common boundary line to the nearest wall of the Dwelling existing or being constructed on the

Adjoining Property. Further provided: (i) the easement shall be exercised at reasonable times and upon reasonable notice to the Owner of the Adjoining Property, and at such times and in such manner as will result in the least amount of interference and damage to the Adjoining Property; (ii) as soon as reasonably practicable following each exercise of the easement, the Owner who exercises the easement shall restore the portion of the Adjoining Property on which the easement exists and all Improvements thereon to substantially the same condition they were in immediately preceding the exercise of the easement; and (iii) in connection with each exercise of the easement, the owner who exercised the easement shall indemnify and hold harmless the Owner of the Adjoining Property from and against any and all claims and causes of action for damages to person or property, including all costs of defending against such claims and causes of action (including reasonable attorney fees) arising out of or resulting from each exercise of the easement.

(b) Perpetual, non-exclusive easements also are reserved or established as follows for portions of The Properties (hereinafter referred to in this subsection as the "Dominant Property") over, upon and on adjoining portions of the Properties (hereinafter referred to in this subsection as the "Adjoining Property") within a ten (10) foot wide section of the Adjoining Property adjacent and parallel to the common boundary line between the Adjoining Property and the Dominant Property, as follows:

(1) for encroachment by a Dwelling or other building, or portion thereof, which has been constructed on the Dominant Property, to the extent that portions of the Dwelling actually encroach and the encroachment has not resulted from the willful or grossly negligent act or omission of the Person who constructed the Dwelling or other building. Examples of such encroachments include overhanging eaves, chimneys, gutters, down spouts, exterior storage rooms, bay windows, steps and walls; and

(2) for the encroachment resulting from the settling or shifting of any such Dwelling or other building resulting from any construction, reconstruction, repair or alteration of same that has been approved by the Architectural Approval Committee as required by the Declaration.

The easements and encroachments established by this subsection shall be appurtenant to the Dominant Property and shall continue for as long as the encroachments naturally exist.

Section 6. Governmental Easements. Declarant reserves an easements for the benefit of the appropriate governmental entity over all Common Areas and over an area ten (10) feet behind the curb line of any street or roadway in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

And easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persona to enter upon the subdivision's private streets and the Sub-Association Common Areas in the performance of their duties.

chimneys, gutters, down spouts, exterior storage rooms, bay windows, steps and walls; and

(2) for the encroachment resulting from the settling or shifting of any such Dwelling or other building resulting from any construction, reconstruction, repair or alteration of same that has been approved by the Architectural Approval Committee as required by the Declaration.

The easements and encroachments established by this subsection shall be appurtenant to the Dominant Property and shall continue for as long as the encroachments naturally exist.

Section 6. Governmental Easements. Declarant reserves an easements for the benefit of the appropriate governmental entity over all Common Areas and over an area ten (10) feet behind the curb line of any street or roadway in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

And easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persona to enter upon the subdivision's private streets and the Sub-Association Common Areas in the performance of their duties.

Section 7. Restriction on Easements. Notwithstanding anything to the contrary contained in this Article, no easement granted, reserved or established in this Article shall be construed to give the Declarant, the Association, the City or any other Person the right to enter any Dwelling or other building located on any Lot or Development Parcel in the Properties.

ARTICLE XI

OWNER MAINTENANCE RESPONSIBILITIES

Section 1. Class A Membership – Maintenance Responsibilities. In addition to maintenance of the Common Area surrounding the attached dwelling units, the Association shall provide exterior maintenance for each Attached Dwelling Lot which is subject to assessment to the Class A Membership as "Limited Common Expenses" for such maintenance of "Limited Association Common Property" hereunder as follows: Paint, repair and replace exterior building surfaces, care of roofs, gutters, downspouts, mailboxes, fences, trees, shrubs, grass, walks located within the front yard of the Lot, driveways, parking areas and private streets located within the Common Area only, and all other exterior improvements initially installed by Declarant. Such exterior maintenance shall not include windows, glass surfaces of any kind, window screens, exterior lighting attached to or wired to the townhome, doors (including garage doors) or any nature and wherever located, decks or stairs. In order to enable the Association to accomplish the foregoing, it is hereby reserved to the Association the right to unobstructed access over and upon each Lot and each townhome at all reasonable times to perform maintenance as provided in this Article. The Owner may, at his election, plant 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

assessment without regard to actual cost of maintenance of each townhome under construction thereon.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Class A Owner, his family guests, tenants, employees, contractors or invitees or is caused by fire, lightning thunderstorm, hail, explosion, riot, attending a strike, civil commotion, aircrafts, vehicles and smoke as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance policy, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Class A Lot is subject.

The Association shall establish regulations governing the procedure for exterior maintenance. In the event any Owner desires to expend a sum greater than that sum authorized by the Association, he shall advance, prior to the commencement of work, an amount necessary to cover the additional expenses and a lien shall be established against his Lot for any deficiency.

Section 2. Class B Membership - Duty to Maintain. Subject to any other applicable terms of this Declaration, the Class B Membership (Owners of all Detached Lots), at such Owner's sole cost and expense, shall Maintain such Lot, including all Improvements thereon, in a safe, clean and attractive condition at all times, including all of the following:

(a) Prompt removal of all litter, trash, refuse and wastes;

(b) Lawn maintenance on a regular basis, including, subject to any applicable Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such portion of The Properties but excluding Landscape Easements, Sign easements, and maintained by the Association;

(c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material;

(d) Maintenance of flower and plant gardens;

(e) Maintenance of exterior lighting and mechanical facilities;

(f) Maintenance of parking areas and driveways;

(g) Complying with all applicable Legal Requirements;

(h) Maintenance of all Improvements thereon;

(i) Maintaining adequate Soil Erosion Controls;

excluding Landscape Easements, Sign easements, and maintained by the Association;

(c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material;

(d) Maintenance of flower and plant gardens;

(e) Maintenance of exterior lighting and mechanical facilities;

(f) Maintenance of parking areas and driveways;

(g) Complying with all applicable Legal Requirements;

(h) Maintenance of all Improvements thereon;

(i) Maintaining adequate Soil Erosion Controls;

(j) Maintenance of storm water drainage easements and portions of The Properties served by storm water drainage easements, as required by the Declaration; and

(k) To the extent not adequately Maintained by the City, the Association or a public utility provider, maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Class B Owner's portion of The Properties, even if located in the Association Common Property. Each Class B Owner also shall provide snow and ice removal for any sidewalks located adjacent to such Class B Owner's portion of The Properties.

Each Class B Owner shall perform the foregoing responsibilities in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of The Properties.

Section 3. Enforcement. If any Member fails to perform any of the foregoing maintenance Responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's portion of The Properties and perform such maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefor. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies against such Owner and such Owner's portion of The Properties as the Association has with respect to the enforcement and collection of annual assessments.

Association assessments. Use of another Recreation Facility within The Properties may require payment of membership fees and continuing dues or assessments separate and apart from all assessments established by this Declaration.

Section 2. Use of Recreation Facility by Declarant. During the Development Period, Declarant hereby reserves the right to use any Recreation Facility owned by the Association at any time and from time to time, without any charge or payment therefor, for any one or more of the following purposes: (i) the club house, as an administrative and sales office for Declarant and/or for any real estate brokerage company or individual used or authorized by Declarant for sales of Lots, or Dwelling Units, for marketing, meeting and promotional functions in connection with the marketing or sale of any part of The Properties or Declarant Property, and as an office and meeting room for the Declarant, the Association, the Managing Agent, the Board and the Architectural Approval Committee; (ii) the remaining Recreation Facility, for marketing, meeting and promotional functions in connection with the marketing or sale of any part of The Properties or the Declarant Property. The foregoing rights of the Declarant include the right to use a reasonable number of parking spaces on the Recreation Facility and any other Association Common Property parking areas. Declarant's use of the Recreation Facility as aforesaid shall have priority over the use of the Recreation Facility by the Association and the other Members of the Association and their family members, guests and invitees; provided, however, Declarant and the Association shall cooperate to schedule Recreation Facility events so that they do not unreasonably overlap or interfere with the use of the Recreation Facility by the other Members of the Association.

Section 3. Use Not a Nuisance. Use of any part of a Recreation Facility by Declarant or by any other Person in accordance with the reasonable rules and regulations established by the Owner of the Recreation Facility, including use of the Recreation Facility for tennis matches, for swim meets, or social events, shall not constitute a nuisance.

Section 4. Management. With respect to any Recreation Facility owned or leased by the Association, the Association shall have the right and authority, at any time and from time to time to establish the rules and regulations for the use of the Recreation Facility and to employ a management company or other Persons to manage and operate the Recreation Facility for the Association.

Section 5. Risks Associated With Use, The Declarant hereby informs all Owners, and their family Members and guests, that there exist certain hazards or risks associated with use of a Recreation Facility, particularly with use of a swimming pool, whether or not a lifeguard is on duty during times when the swimming pool is open for use. With respect to any Recreation Facility owned by the Association that includes a swimming pool, the Association may, but shall not be required to, employ or provide for the services of one or more lifeguards during certain times that the swimming pool is open for use, it being within the sole discretion of the Board whether or not to employ or provide for the services of lifeguards. Each Owner, by acceptance of a deed to such Owner's portion of The Properties, (i) specifically acknowledges the existence and acceptance of the foregoing risks, easements and interference with the use and enjoyment of such Owner's portion of The Properties and the Common Property by that Owner and that Owner's family Members, agents, contractors, guests, lessees and contract purchasers, which

risks and interference arise out of and are associated with the usual and normal operations, use and Maintenance of a Recreation Facility and (ii) agrees to comply with the rules and regulations established by the Association for use of a Recreational Facility owned or leased by the Association.

Section 6. Limitation of Liability. Neither the Declarant, a Builder nor any of their members, managers, employees, agents, contractors, affiliates, subsidiaries, predecessors or successors shall be responsible or liable in any way to any Owner or to any other Person for any claims, causes of action, damages, judgments, liens, losses, injuries, demands, interference, liabilities, or obligations whatsoever, that may result from property damage or personal injury in connection with such Owner or other Person's use of any Recreation Facility, unless the same arises out of or results from the gross negligence or intentional act or omission of such named Person, or unless the same arises out of or results from the act or omission of any such named Person while actually using the Recreation Facility.

ARTICLE XIV

RIGHTS OF MORTGAGEES

Section 1. Notice to Board. Upon request from the Board, any Owner who mortgages such Owner's Lot shall notify the Association of the name and address of the Mortgagee. No Mortgagee shall be entitled to any Mortgagee rights under this Declaration unless such Mortgagee has notified the Association as required in this Article and has requested Mortgagee rights under this Declaration.

Section 2. Requirements of Mortgagee. Whenever any Mortgagee desires to avail itself of the rights afforded Mortgagees under this Declaration and receive notices from the Association, it shall furnish written notice thereof to the Association by CERTIFIED OR REGISTERED MAIL, identifying the portion of The Properties upon which such Mortgagee holds a first lien mortgage or deed of trust, specifying which rights it wishes to exercise and notices or other information it wishes to receive, and designating the name of the person and mailing address to which notices, reports or information are to be sent by the Association. The Mortgagee shall be responsible for updating the information required by this Section.

Section 3. Obligation of Association to Mortgagees. Any Mortgagee who has notified the Association as required in the immediately preceding Section of this Article, shall have each of the following rights that are specifically requested in the notice to the Association:

(a) To inspect Association documents and records on the same terms as the Members of the Association;

(b) To be notified of any meeting of the membership to be held for a vote on any material amendment to the Governing Documents, including the following: material amendment to this Declaration; material amendment to the Articles or

Bylaws; any proposed termination of this Declaration or dissolution of the Association; any proposed merger of the Association with another association.

(c) To be notified of any extraordinary actions to be taken by the Association, or any emergency extraordinary actions taken by the Association.

(d) To be notified of any condemnation or casualty loss affecting the Common Property or any portion thereof,

(e) To be notified of any event giving rise to a claim under the Association's physical damage insurance policy insuring the Common Property, where the damage to the Improvements on the Common Property exceeds an amount equal to ten percent (10%) of the Association's annual budget for Common Expenses, or where the damage is to any portion of The Properties insured by the Association upon which the Mortgagee holds a mortgage;

(f) To be notified of any lapse, cancellation or material modification of any insurance policy Maintained by the Association;

(g) To be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of this Declaration, by the Owner of a Lot upon which the Mortgagee has a mortgage. Provided, however, any failure of the Association to notify the Mortgagee of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's portion of The Properties;

(h) The right of a majority of the Mortgagees to demand professional management of the Association; and

(i) The right of a majority of the Mortgagees to demand an audit of the Association's financial records, not to exceed one audit per calendar year.

ARTICLE XV

AMENDMENT; EXTRAORDINARY ACTIONS

Section 1. Amendment by the Declarant. Subject to the approval of the Raleigh City Attorney or his or her deputy, during the Development Period the Declarant may unilaterally, without the approval or joinder of the Association, or any Member of the Association, Mortgagee or Secondary Mortgage Market Agency, amend any provision of this Subdivision Declaration or any Supplemental Declarations from time to time to: (i) make non-material, clarifying or corrective changes not materially, adversely affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA (Federal Housing Administration), VA

(Veterans Administration), Fannie Mae (Federal National Mortgage Administration); Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (OELSR) or other governmental agency Secondary Mortgage Market Agency or Mortgagee; or (iii) establish or Maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina. Any such amendment shall be effective upon the later of the date of its recordation in the Registry or the effective date specified therein.

Section 2. Amendment by the Association.

(a) Unless a higher percentage or different voting requirement is specified herein, this Declaration may be amended by the affirmative vote of a majority or more of the votes cast by the Members of each class present at a Duly called meeting of the Association. Provided, during the Declarant Control Period, no amendment to this Declaration shall be adopted without the written consent of the Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to this Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall. be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the date of such meeting.

(c) If any amendment to this Subdivision Declaration or Supplemental Declarations is approved by Members of the Association (including material amendments and extraordinary actions of the Association as described herein), the President and Secretary of the Association shall execute a document setting forth the amendment, the effective date of the amendment (if no effective date is stated the amendment shall be effective upon the recording of same in the Registry), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting, the total number of votes present at such meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. The document shall be recorded in the Registry within thirty (30) days following the date of the meeting at which the amendment was adopted. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to this Declaration Duly adopted by the Members of the Association shall be void or invalid solely because the document describing the amendment is not recorded in the Registry within said thirty (30) day period, and any such Duly adopted amendment to this Declaration recorded following the end of said thirty (30) day period shall become effective on the later of the effective date specified therein, if any, or on the date it is recorded in the Registry.

Section 3. Prerequisites to Amendment. No amendment shall increase the financial obligations of an Owner in a discriminatory manner or further restrict development on existing Lots or Unsubdivided Land in a discriminatory manner. No amendment to the Declaration shall

diminish or impair the rights of the Declarant during the Development Period under the Declaration without the prior written consent of the Declarant. No amendment to the Declaration shall diminish or impair the express rights of the Mortgagees under the Declaration without the prior written approval of a majority of the Mortgagees. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

Section 4. Extraordinary Actions and Material Amendments. The provisions of this Section shall not be construed to reduce the vote that must be obtained from Owners where a greater vote is require by the Act or other provisions of the Governing Documents, nor shall it be construed to lessen the unilateral rights given to the Declarant to amend this Subdivision Declaration or a Supplemental Declarations without the approval or joinder of the Association or any Member of the Association, any Mortgagee or any Secondary Mortgage Market Agency.

(a) **"material amendments"** include any amendment adding, deleting or amending any provisions of this Subdivision Declaration regarding any one or more of the following:

(1) basis for assessments, or assessment liens;

(2) any method of imposing or determining any charges to be levied against Owners;

(3) reserves for maintenance, repair or replacement of the Common Property;

(4) maintenance obligations of the Association or any Owner;

(5) allocation of rights to use the Common Property;

(6) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of Improvements;

(7) reduction of insurance requirements;

(8) restoration or repair of the Common Property;

(9) the addition, annexation or withdrawal of real property to or from The Properties;

(10) voting rights (except to reduce the Declarant's voting rights with the consent of the Declarant);

(11) restrictions affecting lease or sale of any portion of The Properties, including amendment or addition of any provisions regarding rights of first refusal or similar restrictions on the right of an Owner to sell, convey, or transfer any interest in, the portion of The Properties owned by such Owner and;

(12) any provision which is for the express benefit of Mortgagees.

(b) **"extraordinary actions"** of the Association include any one or more of the following:

(1) termination of this Declaration

(2) dissolving the Association, or merging or consolidating the Association (other than with another nonprofit entity formed for purposes substantially similar to the Association);

(3) conveyance of all of the Common Property (other than pursuant to dissolution, merger or consolidation of the Association);

(4) determining not to require professional management after the Declarant Control Period if professional management has been required by the Governing Documents, a majority vote of the Members of the Association, or a majority of the Mortgagees;

(5) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of the Common Property except for any one or more of the following:

a) granting easements for utilities or other purposes which are not inconsistent with or which do not interfere with use of the Common Property;

b) dedicating or conveying any Common Property to the City or a public utility provider;

c) limited boundary line adjustments made in accordance with the provisions of this Declaration; and

d) transferring any Common Property pursuant to a merger or consolidation with a nonprofit entity formed for purposes substantially similar to the Association.

(6) using insurance proceeds for purposes other than repair, restoration or replacement of the insured structures on Common Property.

(7) making capital expenditures (other than for maintenance of existing Common Property Improvements) during any period of twelve (12) consecutive months costing in the aggregate in excess of twenty percent (20%) of the larger of the annual operating budgets applicable to any portion of such twelve (12) month period.

provider;

c) limited boundary line adjustments made in accordance with the provisions of this Declaration; and

d) transferring any Common Property pursuant to a merger or consolidation with a nonprofit entity formed for purposes substantially similar to the Association.

(6) using insurance proceeds for purposes other than repair, restoration or replacement of the insured structures on Common Property.

(7) making capital expenditures (other than for maintenance of existing Common Property Improvements) during any period of twelve (12) consecutive months costing in the aggregate in excess of twenty percent (20%) of the larger of the annual operating budgets applicable to any portion of such twelve (12) month period.

(c) Approval. Any material amendment or extraordinary action listed in this Section 4 must be approved either: (i) in writing by the Members entitled to cast sixty-seven percent (67%) or more of the total number of votes of each class of the Members of the Association or (ii) by sixty-seven percent (67%) or more of the votes cast of each class of Members present at a Duly Called meeting of the Association. During the Declarant Control Period, no amendment shall be made without the written consent of the Declarant.

(e) Notice. With respect to any meeting of the Association at which a material amendment or extraordinary action is to be voted upon: (i) written notice of the meeting shall be given to the Members not less than thirty (30) days nor more than sixty (60) days in advance thereof, (ii) the notice of the meeting shall state the purpose of the meeting and contain a copy or summary of any material amendments or extraordinary actions proposed; and (iii) the notice of the meeting shall contain a copy of the proxy that can be cast in lieu of attendance at the meeting.

(f) Quorum Requirement. The quorum requirement for a vote on any material amendment or extraordinary action at a meeting of the Association shall be ten percent (10%) or such greater percentage, if any, as specified in the Bylaws.

(f) Raleigh City Attorney Approval. No amendment to this Declaration shall be made without the consent of the Raleigh City Attorney or his or her deputy, if required.

(g) VA or FHA Consent. When a Veterans Administration ("VA") guarantee is in effect on a Mortgage, without the consent of VA, or when Federal Housing Administration ("FHA") insurance is in effect on a Mortgage, without the consent of FHA: (i) the Declarant may not add Additional Property to this Declaration except as provided herein; and (ii) during the Declarant Control Period, the Association may not make any material amendments to this Declaration or take

Declaration automatically shall be extended in perpetuity for successive periods of ten (10) years each, unless, at a Duly called annual or special meeting of the Association, held prior to the expiration of the applicable time period, termination of this Declaration is approved in the manner required in this Declaration for approval of an extraordinary action of the Association. A vote by the membership on termination of this Declaration shall be required upon presentation to the Association of a petition for termination signed by Members possessing twenty percent (20%) or more of the total eligible vote of the membership of the Association (excluding the eligible votes of the Declarant during the Development Period). The Association shall give written notice of any annual or special meeting at which termination of this Declaration is to be voted upon to all Owners at least thirty (30) days, but not more than sixty (60) days in advance of the date of such meeting, which notice shall set forth that termination of this Declaration will be voted upon at such meeting. If the membership votes to terminate this Declaration, such termination shall be effective upon the expiration of the then applicable time period for which the Declaration is in existence, or shall be effective on such date thereafter, if any, as specified in the vote of the membership approving the termination; provided, no termination of this Declaration shall be made without the consent of the Raleigh City Attorney or his or her deputy.

If the Members vote to terminate this Declaration in accordance with the foregoing requirements, then the President and Secretary of the Association shall execute in recordable form a certificate which shall set forth at least the following information: that the Declaration has been terminated by vote of the Members of the Association; the date of the meeting of the Association at which the termination was approved; the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting; the total number of votes present at such meeting; the total number of votes necessary to adopt the resolution terminating the Declaration; the total number of votes in favor of such resolution; and the total number of votes against the resolution. Such certificate shall be recorded in the Registry not later than thirty (30) days following the date such resolution of termination is passed by the membership, and such certificate may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Notwithstanding anything to the contrary appearing herein, during the Declarant Control Period this Declaration shall not be terminated without the written consent of the Declarant nor shall any easement established by this Declaration be terminated or revised, without the written consent of the person or entity benefited by the easement or by the person or entity who owns the portion of The Properties benefited by the easement.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of this Declaration, or upon approval by the Members in the same manner required in this Declaration for approval of an extraordinary action of the Association. Provided, however, during the Development Period the Association shall not be dissolved without the written consent of the Declarant. Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by this Declaration, or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Property not under the jurisdiction of and being Maintained by another association substantially similar to the Association, together

with all other assets of the Association, shall be offered to the City of Raleigh, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If the City of Raleigh or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the City of Raleigh or such other appropriate governmental entity or public agency, subject to the superior right of an Owner of a portion of The Properties to an easement (if necessary) for reasonable ingress and egress to and from such Owner's portion of The Properties and the public or private street(s) on which such portion of The Properties is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the City of Raleigh or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association with consent of the Raleigh City Attorney or his or her deputy may transfer and convey such Common Property and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Sub-Association Common Property was required to be devoted by this Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Property and assets of the Association, then there shall be no dissolution of the Association and assets shall be distributed as provided in the plan of dissolution adopted by the Association.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 1. Enforcement. The Association, each Owner (including the Declarant), and, when enforcement rights are granted by this Subdivision Declaration, a Mortgagee, the VA or FHA, shall have the night, but not the obligation, to enforce this Declaration by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any Person violating or attempting to violate any part of this Subdivision Declaration, either to restrain the violation, recover damages, or seek other available legal or equitable remedies, and the Association shall have the right, but not the obligation, to enforce any lien created by this Declaration. Any failure by the Association, an Owner (including the Declarant), or any other Person to enforce this Declaration or seek any applicable remedy with respect to any specific violation or lien shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Declaration at any other time with respect to the same or substantially similar matter. All rights, remedies and privileges granted to the Association, any Owner (including the Declarant) or any other Person herein are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held

by any court of competent Jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Notice, Except as otherwise provided herein, whenever written notice to an Owner is required hereunder, such notice may be given by first class United States mail, postage prepaid, addressed to the address of such Owner appearing on the records of the Association or as listed on the county tax records or in such other manner specifically allowed or required by applicable Legal Requirements, or in such other manner determined by the Board to be proper and which does not violate any applicable Legal Requirements. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Owner or an adult residing with the Owner, as evidenced by a receipt signed by the Owner or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national or regional courier service, or (v) Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to an Owner, when addressed to the principal business office of the Association or the community association manager employed by the Association. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. If an Owner has not provided the Association with the Owner's current mailing address the Association may use as the mailing address the street address listed on County tax records of The Properties owned or previously owned by such Owner. Notice given in the foregoing manner to any one (1) of multiple owners of a portion of The Properties shall be deemed notice to all of such Owners. on the date acknowledged in writing by the recipient Owner or other adult residing with such Owner.

Section 4. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of this Declaration.

Section 5. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 6. No Exemption. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Property or any portion of The Properties owned by such Owner.

Section 7. **Subdivision, Combination of Lots; Plat Re-recording.** During the Development Period, a Lot may be subdivided, and the boundaries of a Lot may be altered, only

with the written consent of Declarant (and, thereafter, the Board, or as otherwise provided herein), and with any prior approval required of the Mortgagees and the City of Raleigh. Provided, however, this Section is not intended to require the approval of the Declarant or the Board to leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to the Declarant, the Association, the City, or a public utility provider. One or more Lots may be combined into a single Lot with the written consent of Declarant during the Declarant Control Period (and thereafter the Board, or as allowed by the Board) and, upon such combination and consent of Declarant, the resulting Lot shall be considered as one Lot for the purposes of this Declaration. Provided, the foregoing shall not prohibit or restrict the right of Declarant during the Development Period, which is hereby expressly reserved for Declarant, to subdivide, combine, resubdivide, recombine, or re-record maps relating to, any Lot or Unsubdivided Land subject to this Declaration.

During the Development Period the Declarant may, at any time and from time to time, in its sole discretion and without the consent or approval of any other Person (except for such approvals as may be required by the City of Raleigh) re-record any previously recorded plat of The Properties (i) in connection with any of the purposes described in the immediately preceding paragraph of this Section, or (ii) to eliminate any inconsistency between such plat and this Subdivision Declaration any Supplemental Declarations (including, for example, building setback).

Section 8. Contracts made by the Association during the Declarant Control Period. All Association contracts made during the Declarant Control Period which extend beyond the Declarant Control Period must meet at least one of the following criteria: (i) be for a term limited to two years or less; (ii) be terminable by the Association upon ninety (90) days written notice; (iii) be commercially reasonable and made with an entity not affiliated with the Declarant; or (iv) be approved by VA.

Section 9. Conflict Between Declaration and Articles, Bylaws. Whenever there exists a conflict between the provisions of this Declaration and the Articles or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control.

Section 10. Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to temporarily or permanently in writing assign any or all of its rights, privileges and powers under this Subdivision Declaration or under any Supplemental Declarations.

Section 11. Rule Against Perpetuities. If any provision of this Declaration violates any applicable Rule Against Perpetuities, such provisions shall be deemed reformed to continue in effect for the maximum period of time that such provision could exist without violating such applicable Rule Against Perpetuities.

Section 12. Applicable Laws. This Declaration shall be subject to and construed in accordance with the laws, ordinances and regulations of the State of North Carolina the City of Raleigh, North Carolina, the County of Wake, North Carolina, and the United States of America.

Section 13. Private Streets. Pursuant to Raleigh City Code 10-3074 (b):

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, homeowners association, or occupants; and

(b) In no case shall the City or State be responsible for Maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The Association will be responsible for such Maintenance of all private streets that are Common Property of the Association.

Section 14. Cluster Development. The Properties are part of a cluster unit development approved by the City of Raleigh in 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 approval of density transfers may, in fact, preclude City of Raleigh approval of additional dwellings or further subdivision of Lots.

IN WITNESS WHEREOF, the undersigned Declarant, has caused this Declaration to be signed in its corporate name by its duly authorized Member/Managers, the day and year first above written.

SANDERS LANDOVER L.L.C.

By: Barbara S McGee (SEAL)
Barbara S. McGee, Member/Manager

STATE OF ~~NORTH~~ South CAROLINA
COUNTY OF Charleston

I, Kevin Hilbreth, a Notary Public of the County and State aforesaid, do hereby certify that Barbara S. McGee, Member/Manager of Sanders Landover L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 29th day of May, 2002.

Notary Public

My Commission Expires: My Commission Expires November 14, 2006

KEVIN HILBRETH NOTARY PUBLIC SOUTH CAROLINA

By: Deborah S Benton (SEAL)
Deborah S. Benton, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Richard A Benton, a Notary Public of the County and State aforesaid, do hereby certify that Deborah S. Benton, Member/Manager of Sanders Landover L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 31st day of May, 2002.

Notary Public

My Commission Expires: 10-6-04

By: Thomas B. Sanders (SEAL)
Thomas B. Sanders, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF Carteret

I, Charlotte J Adkins, a Notary Public of the County and State aforesaid, do hereby certify that Thomas B. Sanders, Member/Manager of Sanders Landover L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 29th day of May, 2002.

Charlotte J Adkins
Notary Public

My Commission Expires: 8/3/05

CHARLOTTE J ADKINS NOTARY PUBLIC CARTERET COUNTY, NC

Exhibit A

Being all of that certain tract or parcel of land containing 15.29 acres as shown on plat thereof recorded in Book of Maps 2002, Page 175, Wake County Registry.

Laura M Riddick
Register of Deeds
Wake County, NC

Book : 009443 Page : 00484 - 00547

Section 12. Applicable Laws. This Declaration shall be subject to and construed in accordance with the laws, ordinances and regulations of the State of North Carolina the City of Raleigh, North Carolina, the County of Wake, North Carolina, and the United States of America.

Section 13. Private Streets. Pursuant to Raleigh City Code 10-3074 (b):

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, homeowners association, or occupants; and

(b) In no case shall the City or State be responsible for Maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The Association will be responsible for such Maintenance of all private streets that are Common Property of the Association.

Section 14. Cluster Development. The Properties are part of a cluster unit development approved by the City of Raleigh in 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 approval of density transfers may, in fact, preclude City of Raleigh approval of additional dwellings or further subdivision of Lots.

IN WITNESS WHEREOF, the undersigned Declarant, has caused this Declaration to be signed in its corporate name by its duly authorized Member/Managers, the day and year first above written.

SANDERS LANDOVER L.L.C.

By: Barbara S McGee (SEAL)
Barbara S. McGee, Member/Manager

STATE OF ~~NORTH~~ South CAROLINA
COUNTY OF Charleston

I, Kevin Hilbert, a Notary Public of the County and State aforesaid, do hereby certify that Barbara S. McGee, Member/Manager of Sanders Landover L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 29th day of May, 2002.

Notary Public

KEVIN HILBERT NOTARY PUBLIC SOUTH CAROLINA

My Commission Expires: My Commission Expires November 14, 2006

Prepared by and mail to: Harold E. Russell, Jr. #167

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LANDOVER SUBDIVISION PHASES 4, 5 AND 6

This Supplemental Declaration of Covenants, Conditions and Restrictions for Landover Subdivision, Phases 4, 5 and 6 (the "Supplemental Declaration"), made and entered into this _____ day of February, 2004, by Sanders Landover, L.L.C., a North Carolina Limited Liability Corporation (the "Declarant") and Capitol Homes, Inc., a North Carolina corporation.

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Landover Subdivision was recorded in Book 9443, Page 484, Wake County Registry (the "Declaration"); and

WHEREAS, pursuant to Article II of the Declaration, the Declarant desiresto supplement the Declaration by adding the Additional Property as defined below.

WHEREAS, the Declarant is the Owner of the following property:

Being all of lots 18 through 28 and lots 30 and 31 inclusive in Phase 4, lots 37 through 49 inclusive and lots 64 through 66 inclusive in Phase 5 and lots 50 through 63 inclusive in Phase 6, all as shown on plat of survey entitled "Landover Subdivision" and recorded in Book of Maps 2003, Page 1609, Wake County Registry.

WHEREAS, Capitol Homes, Inc. is the owner of Lots 17 and 29 in Phase 4 as shown on plat recorded in Book of Maps 2003 Page 1609, Wake County Registry.

NOW THEREFORE, BE IT RESOLVED, that the Additional Property owned by the Declarant and Capitol Homes, Inc. is hereby made subject to the Declaration.

IT WITNESS WHEREOF, the undersigned, being the Declarant herein and under the Declaration and Capital Homes, Inc.has caused this Supplemental Declaration to be executed for the purpose of subjecting the above referenced property to the Declaration recorded in Book 9443, Page 484, Wake County Registry.

SANDERS LANDOVER, L.L.C.

By: Deborah S Benton member

Deborah S. Benton, Member/Manager

CAPITOL HOMES, INC.

By: _____

Glenn Hartman, Vice President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Shannon D. Ormsby a Notary Public of the County and State aforesaid do certify that Deborah S. Benton personally came before me this day and acknowledged that she is a Member/Manager of Sanders Landover, L.L.C., a North Carolina Limited Liability Company, and that by authority duly given, the foregoing instrument was signed by her in the Company name as the act of the Company.

Witness my hand and official seal, this the 11 day of February, 2004.

Notary Public

My Commission expires: 11-18-2004

SHANNON D. ORMSBY NOTARY *** PUBLIC WAKE COUNTY N.C.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Shannon D. Ormsby, a Notary Public of the County and State aforesaid do certify that Glenn Hartman personally came before me this day and acknowledged that he is VicePresident of Capitol Homes, Inc., and that he as Vice President being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 10th day of February, 2004.

Notary Public

My Commission expires: 11-18-2004

SHANNON D. ORMSBY NOTARY *** PUBLIC WAKE COUNTY N.C.

BK012079PG00434

WAKE COUNTY, NC 576
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/25/2006 AT 16:29:26

BOOK:012079 PAGE:00434 - 00448

PREPARED BY AND HOLD FOR:
Harold E. Russell, Jr., Box # 167

STATE OF NORTH CAROLINA
COUNTY OF WAKE

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LANDOVER SUBDIVISION AND AMENDMENT

This Supplemental Declaration of Covenants, Conditions and Restrictions for Landover Subdivision and Amendment, (the "Supplemental Declaration"), made and entered into this 19th day of June, 2006, by Sanders Landover, L.L.C. (the "Declarant"), Landover Homeowners Association, Inc., a North Carolina non-profit corporation, and Ross Construction, Inc., a North Carolina corporation.

W I T N E S S E T H:

WHEREAS, the Subdivision Declaration for Landover was recorded in Book 9443, Page 484, Wake County Registry (the "Declaration");

WHEREAS, the date of this Supplemental Declaration falls within the Declarant Control Period as defined in the Declaration;

WHEREAS, Declarant has conveyed Lots 1 through 19, 23 through 30, 37 through 39, of Landover Town Homes as shown on those certain plats recorded in Book of Maps 2005, Pages 2160 and 2161 in Wake County Registry to Ross Construction, Inc. and such property is a part of Landover;

WHEREAS, Declarant, Landover Homeowners Association, Inc. and Ross Construction, Inc. execute this Supplemental Declaration for the purpose of subjecting The Properties owned by them to such Supplemental Declaration;

WHEREAS, Exhibit B and Exhibit C were not attached to the recorded Declaration;

WHEREAS, pursuant to Article XV of the Declaration, the Declarant desires to amend the Declaration as set forth herein and by attaching Exhibit B of the Declaration as Attachment I to this Supplemental Declaration which lists the Additional Property that can be annexed to the Property;

WHEREAS, pursuant to Article XV of the Declaration, the Declarant desires to amend the Declaration as set forth herein and by eliminating Exhibit C of the Declaration as there is no Exhibit C attached and reference to Exhibit C in the Declaration shall be disregarded;

WHEREAS, pursuant to Article II of the Declaration, the Declarant, as the owner of The Properties, desires to supplement the Declaration by adding the property described on Attachment II and Attachment III of this Supplemental Declaration to The Properties, as defined in the Declaration, whereby the property described on Attachment II and Attachment III hereto will be subject to the Declaration;

WHEREAS, although separate easements, covenants and restrictions (which may or may not be similar to those herein contained) may be imposed for Landover Subdivision recorded in Book 9443, Page 484, Wake County Registry, and as thereinafter amended and including all subsequent amendments thereto (herein defined as the "Master Declaration"), pursuant to Article XV of the Master Declaration, Declarant desires to impose pursuant hereto, additional easements, covenants and restrictions upon all of the Additional Properties covered by this Supplemental Declaration, and to establish certain rights for, and impose certain obligations upon, the Owners of the Additional Properties described in Attachment II and Attachment III of this Supplemental Declaration and any additions thereto.

WHEREAS, Declarant will convey the said Additional Properties described in Attachment II and Attachment III of this Supplemental Declaration subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of **LANDOVER SUBDIVISION**, for the maintenance of the Common Properties and improvements thereon as described herein, and accordingly desires to subject the Additional Property, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens as hereinafter set forth, each and all of which is hereby declared to be for the benefit of said Additional Property and each and every Owner of any and all parts thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of **LANDOVER SUBDIVISION** to create an entity to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Common Properties, administering and enforcing the covenants and restrictions governing said Common Properties, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents.

NOW, THEREFORE, BE IT RESOLVED,

1. The Declaration shall be amended as set forth in Article I of the Supplemental Declaration, and the Additional Property, as described in Attachment I hereto, shall be added as Exhibit B to the Declaration;

2. There is no Exhibit C to the Declaration and any reference to Exhibit C in the Declaration shall be disregarded;

3. The Additional Property, as described in Attachment II and Attachment III of this Supplemental Declaration, is hereby made subject to the Declaration; and

4. The Declarant hereby declares the Additional Property, as described in Attachment II and Attachment III of this Supplemental Declaration, is subject to the Declaration and Supplemental Declaration, shall be held, occupied, used, transferred, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property; these easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I – ASSESSMENTS AND OTHER CHARGES

Section 1. Amended, Section 1 (p) of Article IV of the Declaration. All water lines and sewer lines located within the Common Areas which are not owned and operated by the City of Raleigh are the responsibility of the Association.

Section 2. Amendment to Article VI, Section 17 of the Declaration. This section of Article VI of the Declaration is rewritten and shall read as follows:

> "**Section 17.** Declarant has no obligation for payment of Annual and Special Assessments. During the Declarant Control Period, the Declarant shall not pay any annual or special assessments for vacant recorded Lots.
>
> However, during the Declarant Control Period, the Declarant shall fund all annual operating budget deficits, if any. The Declarant's deficit funding obligation may be satisfied with in-kind payments of services or materials. The Declarant's deficit funding obligation does not include any expenses that the Association is unable to meet because of nonpayment of any assessments by Owners other than Declarant, or because of unusual or extraordinary expenses not included in the annual operating budget. The deficit funding obligation of the Declarant may be enforced against the Declarant and collected by the Association in the same manner as annual assessments applicable to other Owners."

Section 3. Amendment to Article XI, Section 1 of the Declaration. The following paragraph is inserted into Article XI, Section 1 of the Declaration as the fourth (4th) paragraph, and shall read as follows:

> **Maximum Annual Assessment for Limited Common Expenses.** In the calendar year 2006, the Maximum Annual Assessment for Limited Common Expenses for each Lot of a Class A Member shall be determined by the Board of Directors subject to Article XI of the Declaration. Within thirty (30) days after the Board sets the Maximum Annual Assessment for Limited Common Expenses, the Board shall provide to all Class A Members, and only Class A Members, a summary of such assessment and a notice of the meeting to consider ratification of such assessment, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. Such meeting may, but need not be, combined with the annual meeting of the Members. A quorum need not be present at such meeting, and the Maximum Annual Assessment for Limited Common Expenses is ratified unless at that meeting the Class A Members entitled to exercise fifty-one percent (51%) of the votes of all Class A Members reject such assessment. In no event may the Board or membership of the Association decrease the amount of the Maximum Annual Assessment for Limited Common Expenses for any calendar year from the amount of the Maximum Annual Assessment for Limited Common Expenses for the previous calendar year.

Section 4. Amendment to Article XI, Section 1 of the Declaration. The following paragraph is inserted into Article XI, Section 1 of the Declaration as the fifth (5th) paragraph, and shall read as follows:

> **Alteration of Annual Assessments for Limited Common Expenses.** Beginning with the calendar year commencing on January 1, 2006, unless otherwise determined by the Board as allowed herein, the Maximum Annual Assessment for Limited Common Expenses shall automatically increase each calendar year by an amount equal to the greater of (i) ten percent (10%) of the Maximum Annual Assessment for Limited Common Expenses for the immediately preceding calendar year, or (ii) the amount of the Maximum Annual Assessment for Limited Common Expenses for the immediately preceding calendar year multiplied by the percentage increase reflected in the Consumer Price Index-U.S. City Average, All Items (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) then in effect or such other index as may be the successor to said Consumer Price Index, for the twelve month period ending the immediately preceding July 1. Provided, however, for each year commencing with the calendar year 2006, the Board, in its sole discretion by majority vote, may elect to provide for no increase in the Maximum Annual Assessment for Limited Common Expenses, or may provide for an increase in the Maximum Annual Assessment for Limited Common Expenses in an amount less than the amount by which it would automatically increase as provided herein. However, during the Declarant Control Period and during the period of time any outstanding loan balance is owed to the Declarant, without the written consent of the Declarant, the Board shall not reduce the Maximum Annual Assessment for Limited Common Expenses. Further provided, however, if the Board provides for no increase in the Maximum Annual Assessment for Limited Common Expenses or provides

for an increase less than the amount by which it would automatically increase as provided herein, the Board may at any time increase the Maximum Annual Assessment for Limited Common Expenses up to the maximum amount to which it would have increased automatically as provided herein.

ARTICLE II – DEFINITIONS

The following words and terms, when used in this Supplemental Declaration or any amendment hereto unless amended or unless the context clearly indicates otherwise, are defined as follows (terms and words used in this Supplemental Declaration without definition shall have the meanings, if any, specified therefore in the "Definitions" article of the Declaration):

(a) "Common Space" is defined as the property intended for the use and benefit of the residents of the development; common space includes but is not limited to: (1) any private street, (2) stormwater control measures, including without limitation, detention facilities, retention facilities, wet ponds, sand filters, wetlands, bio-retention measures, swales and storm pipes that serve more than one (1) lot and are located outside of public street rights-of-way (excluding those pipes and stormwater control measures serving one (1) lot), (3) any utility line located outside public street rights-of-way and public utility easements, and not located on an individual lot, (4) any site or facility designated a common area on any recorded plat or in any declaration of covenant, and (5) any City Code required shared facility or open space not conveyed to the government.

ARTICLE III - Pparty WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of Attached Dwelling Units upon the Additional Properties, as described in Attachment II and III of this Supplemental Declaration, and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, 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. All common party walls between individual Attached Dwelling Units shall conform to the requirements of the North Carolina State Building Code and the Raleigh City Code.

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, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The Association shall have the option to require all Members to utilize the same insurance company for fire and other casualty insurance. In such

insuran option

event, every Member shall be responsible for payment of the deductible required under said policy of insurance.

Section 4. Repair and Reconstruction. The Owner of any Lot may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants and the Master Association) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction 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 provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with 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 Contribution 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 III, request of the adjoining property owner or property owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to certify whether or not a claim of contribution exists.

Section 8. Arbitration. In the event of any dispute arising concerning party wall, or under the 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 IV – USE RESTRICTIONS

Section 1. Restricted Parking Rights. No boats, trailers, campers, motor homes, limousines, trucks, tractors or similar personal property owned by Members, their family members or tenants shall be parked within the right of way of any public or private street, nor shall any of these be parked on the Additional Properties, as described in Attachment II and III of this Supplemental Declaration, except in an enclosed garage, or in areas, if any, designated by the Association. Members, their family members and tenants shall keep their garage doors closed at all times excepting ingress and egress into and out of said garage. The Association shall have the right to adopt appropriate rules for the temporary parking of these items on the Additional Properties, and to establish fines for violators.

IN WITNESS WHEREOF, the undersigned Declarant, has caused this Supplemental Declaration to be signed in its corporate name by its duly authorized Member/Managers, the day and year first above written. This Supplemental Declaration has

been consented to and executed by authorized representatives of Ross Construction, Inc. and Landover Homeowners Association, Inc.

Approved by:

Associate/Deputy City Attorney

SANDERS LANDOVER, L.L.C.

BY: _____

Barbara S. McGee, Member/Manager

STATE OF ~~NORTH~~ South CAROLINA
COUNTY OF Charleston

I, Eloise F. La Vigne, Notary Public of the County and State aforesaid, do hereby certify that Barbara S. McGee, Member/Manager of Sanders Landover, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this 27th day of June, 2006.

_____
Eloise F. La Vigne

NOTARY PUBLIC SOUTH CAROLINA ELOISE F. LA VIGNE

My Commission Expires: 1/19/2008

SANDERS LANDOVER, L.L.C.

BY: Deborah S Benton member
Deborah S. Benton, Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Brian R Dial, a Notary Public of the County and State aforesaid, do hereby certify that Deborah S. Benton, Member/Manager of Sanders Landover, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this 19 day of June, 2006.

Brian R Dial, Notary Public

My Commission Expires: November 29, 2010

BRIAN R. DIAL NOTARY PUBLIC WAKE COUNTY, NC

SANDERS LANDOVER, L.L.C.

BY: Thomas B. Sanders
Thomas B. Sanders, Member/Manager

South
STATE OF ~~NORTH~~ CAROLINA
COUNTY OF Charleston

I, Eloise F. LaVigne, Notary Public of the County and State aforesaid, do hereby certify that Thomas B. Sanders, Member/Manager of Sanders Landover, L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this 27th day of June, 2006.

Eloise F. LaVigne, Notary Public

My Commission Expires: 1/19/2008

3K012079PG00443

LANDOVER HOMEOWNERS ASSOCIATION, INC.

BY: Deborah S Benton
DIRECTOR . Vice Pres

South

STATE OF ~~NORTH~~ CAROLINA
COUNTY OF Charleston

I, Eloise F. LaVigne, a Notary Public of the County and State aforesaid, do hereby certify that Deborah S Benton, DIRECTOR/VP of Landover Homeowners Association, Inc., a North Carolina non-profit corporation, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this 27th day of June, 2006

Eloise F. LaVigne, Notary Public

My Commission Expires: 1/19/2008

ROSS CONSTRUCTION, INC.

BY: _____
ROBERT D Ross . CEO Ross Construction, INC.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, AMANDA K. POLING, a Notary Public of the County and State aforesaid, do hereby certify that ROBERT ROSS, CEO of Ross Construction, Inc., a North Carolina corporation, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this 5 day of July, 2010

Amanda K. Poling
Amanda K. Poling
Notary Public

My Commission Expires: 5/8/10

ATTACHMENT I
(also known as Exhibit B to the Declaration)

Being all that certain tract or parcel of land containing 56.63 acres conveyed to Sanders Landover, LLC, a North Carolina limited liability company, by deed recorded in Book 8562, Page 1078, Wake County Registry but less and accept that certain tract or parcel of land containing 15.29 acres as shown on the plat thereof recorded in Book of Maps 2002, Page 175, Wake County Registry (the Property) which was originally subjected to the Declaration.

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ATTACHMENT II

BEING all of that certain tract or parcel of land containing 9.65 acres and designated as Landover Town Homes as shown on plat thereof recorded in Book 2005, Pages 2160 through 2161, inclusive, Wake County Registry. Such property is a part of Exhibit B to the Declaration.

ATTACHMENT III

Tract I:

BEING all of that lot consisting of 0.72 acres and designated as Pool Site, New Lot # 33, Landover Subdivision, as shown on Map Book 2004, Page 336, Wake County Registry. Such property is a part of Exhibit B to the Declaration.