

Prepared by and hold for after recording: Smith Helms Mulliss  
 Moore, L.L.P. (DKB), P. O. Box 27611, Raleigh, North Carolina  
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PRESENTED

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LAURA J. MULLISS  
REGISTER OF DEEDS  
WAKE COUNTY

## DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

SCOTTS MILL

THIS DECLARATION is made on the date hereinafter set forth by Stratford Woods, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Wake County, North Carolina, which is more particularly described as follows:

ALL of Phase 1, Scotts Mill as shown the plat entitled "Scotts Mill, Phase 1" and recorded in Plat Book 1996, Page 1559, in the Office of the Register of Deeds of Wake County, North Carolina.

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

## DEFINITIONS

SECTION 1. "Affiliate" shall mean any corporation more than fifty percent (50%) of the voting stock of which is owned or controlled by the Declarant, and any partnership, joint venture or limited liability company in which the Declarant has more than a fifty percent (50%) equity interest or an interest in fifty

percent (50%) or more of the cash flow from such partnership, joint venture or company.

SECTION 2. "Association" shall mean and refer to Scotts Mill Homeowners Association, Inc., its successors and assigns.

SECTION 3. "Builder" shall mean and refer to any person or entity acquiring a Lot from Declarant or an Affiliate for the express purpose of constructing a dwelling on the Lot within two (2) years of acquiring the Lot and, without at any time permitting use of the dwelling as a residence, selling the improved Lot.

SECTION 4. "Common Property" shall mean all real property together with any improvements located thereon, owned by the Association, whether in fee or an easement, for the common use and enjoyment of the Owners. The term "Common Property" shall also include any personal property owned or leased by the Association and designated "Common Property".

SECTION 5. "Declarant" shall mean and refer to Stratford Woods, LLC, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign, all of which rights, including Declarant's voting rights, shall be assignable and may be apportioned.

SECTION 6. "Lot" shall mean and refer to any separately numbered plot of land, townhome lot or condominium unit shown upon any now or subsequently recorded subdivision plat or plan of condominium of any portion of the Properties with the exception of Common Property, Neighborhood Common Property and dedicated streets and shall include the dwelling constructed thereon. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Property; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Town of Apex or other appropriate governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 7. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

SECTION 8. "Neighborhood Common Property" shall mean all real property, together with any improvements located thereon, owned by any Neighborhood Association, as hereinafter defined, for the common use and enjoyment of the members of such Neighborhood Association. The term "Neighborhood Common Property" shall also include any personal property owned or leased by the Neighborhood Association and designated for the common use and enjoyment of such association's members.

SECTION 9. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 10. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 11. "FHA" shall mean and refer to the Federal Housing Administration of the Department of Housing and Urban Development and "VA" shall mean and refer to the Department of Veterans Affairs.

## ARTICLE II

### PROPERTY RIGHTS

SECTION 1. COMMON PROPERTY. Declarant does hereby grant and convey to the Association as Common Property a perpetual, non-exclusive right, privilege and easement on, over and upon all that land designated "20' LANDSCAPE BUFFER" and "25' BUFFER" as shown on the plat entitled "Scotts Mill Subdivision, Phase 1" and recorded in Plat Book 1996, Page 1559, in the Office of the Register of Deeds, Wake County, North Carolina, for the purposes set forth in Article X, Section 4 hereof. TO HAVE AND TO HOLD the above-described rights and easements unto the Association, its successors and assigns, forever. Declarant reserves the right, in its sole discretion, to convey from time to time and without the consent of the Association or its Members, additional property to the Association, whether in fee or an easement, which property may include all or any portion of the Properties, including any additional land annexed by Declarant pursuant to Article XII, Section 4 hereof and the Association shall accept any such conveyance of additional property and thereafter such additional property shall be held and maintained by the Association as Common Property. Improvements, which may include, but shall not be limited to, signs and entryways announcing Scotts Mill or any residential community which is a part of Scotts Mill, fencing, landscaping and lighting and irrigation systems surrounding same, retention or detention ponds, erosion control devices, greenways, roadways, walking/nature paths and parks may be located on such additional Common Property; provided, however, nothing herein shall obligate Declarant to improve the Common Property now or

hereafter conveyed to the Association. In addition, the Association may acquire additional Common Property together with any improvements located thereon, with the consent of the Members of the Association entitled to cast at least two-thirds (2/3) of the vote of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Property must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and made a part of the minute book of the Association; and (3) be properly recorded in the Wake County Registry.

SECTION 2. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article X hereof;

(b) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Property;

(c) The right of the Association to suspend the rights and easements of enjoyment of any Owner for any period during which the payment of any Assessment against property owned by such Owner remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any Assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the Assessment or comply with the rules and regulations, provided, however, that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) the right of the Association to dedicate or transfer to any public agency, authority or utility non-exclusive easements on, over and upon all or any part of the Common Property for purposes of providing service to the Common Property or the Lots subject to such conditions as may be agreed to by the Association's Board of Directors; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(e) the right of the Association, with the consent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members, voting in person or by proxy, at a meeting duly called for such purpose, to dedicate or transfer to any public agency, authority or utility, or to transfer to any party, fee title to all or any part of the Common Property for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Property or cause any Lot or any remaining Common Property to fail to comply with applicable laws, regulations or ordinances;

(f) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Property and improvements thereon, which regulations may further restrict the use of the Common Property, and specifically including the right to make permanent and temporary assignments of parking spaces and to establish rules and regulations concerning the use thereof;

(g) the right of the Association to borrow money for the purpose of improving the Common Property and facilities thereon and, with the assent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members, voting in person or by proxy, at a meeting duly called for such purpose, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Property or cause any Lot or any remaining Common Property to fail to comply with applicable laws, regulations or ordinances; and

(h) subject to the prior written consent of FHA or VA, in the event FHA or VA insured loans have been obtained secured by Lots, the right of the Association to exchange portions of Common Property with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Properties or for the purpose of enhancing the utility of the Common Properties to be retained by the Association and the right of the Association, in the discretion of its Board of Directors, to reconvey to Declarant portions of the Common Property inadvertently or mistakenly conveyed by Declarant to the Association.

SECTION 3. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common

Property and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 4. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association 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. All leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

SECTION 6. OWNERSHIP, OPERATION AND RIGHT TO USE PRIVATE RECREATIONAL CENTER. Declarant presently intends to construct, own and operate a private recreational center adjacent to the Properties to be known as the Southern Oak Recreation Center (the "Recreation Center"). Declarant also presently intends to offer to Owners and to the owners of residential dwelling units in a neighboring residential community to be developed on a near or adjacent parcel of land consisting of approximately 100 acres rights permitting the use of the Recreation Center's facilities for such price and otherwise on and subject to such terms as Declarant, in its sole discretion, may hereafter determine. Notwithstanding Declarant's present intentions regarding the Recreation Center, no representations or warranties are made with regard to the continuing existence, ownership, membership or operation of the Recreation Center and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment to this Declaration. Further, the ownership, operation and/or membership criteria of the Recreation Center may change at any time and from time to time and no consent of the Association or any Owner shall be required to effect such transfer or change in operation. Further, notwithstanding Declarant's present intentions, neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Recreation Center. Rights to use the Recreation Center will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner of the Recreation Center and, within the sole discretion of the owner of the Recreation Center, use/membership rights at any time may be opened to the general public. The owner of the Recreation Center shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Recreation Center, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS

SECTION 1. The voting Members of the Association shall be the Class A Members and the Class B Members defined below.

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

Class A The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except Declarant during the period Declarant is a Class B Member as defined below. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B The Class B Members shall be the Declarant and Declarant shall be entitled to three (3) votes for each lot owned by it or any Affiliate and shown on the Master Subdivision Plan for "Scotts Mill" approved by the Town of Apex or other appropriate governmental authority, as such plan is from time to time amended and approved. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, the Master Subdivision Plan for "Scotts Mill" are amended to add additional lots sufficient to entitle the Class B to cast more votes (with the Class B membership entitled to three (3) votes for each lot owned by Declarant or any Affiliate) than the Class A membership is entitled to cast and the amended Plan is approved by the Town of Apex or other appropriate governmental authority; or,

(ii) fifteen (15) years from the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina.

## ARTICLE IV

## COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Property; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Property if the Association shall default in the payment of either or both for a period of six (6) months. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Property or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes assessed against the Common Property; the maintenance of open spaces, greenways, walking/nature paths and streets within the Common Property which have not been accepted for dedication by a public authority, drives and parking areas within the Common Property; the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Property; the erection, maintenance and repair of signs and entranceways within the Common Property announcing Scotts Mill or any residential community which is a part of Scotts Mill, fencing, landscaping and lighting and irrigation systems surrounding same; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Property; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality

of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When any Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the properties.

SECTION 3. MAXIMUM ANNUAL ASSESSMENT. Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED Dollars (\$300.00) per Lot, and may be collected in monthly installments of TWENTY FIVE Dollars (\$25.00) per Lot.

(d) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.

(e) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

(f) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis; provided, however, that so long as any Lot owned by Declarant or an Affiliate is unimproved or any dwelling located thereon is unoccupied as a residence, the amount of the assessment for each such Lot shall be an amount equal to twenty-five percent (25%) of the regular assessments fixed for each Lot.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is made subject to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. In the event the Board of Directors shall fail to fix the amount of annual assessments described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. Upon adoption by the Board of the budget and annual assessments amount, the Board shall deliver copies of same to every Owner subject thereto; provided, however,

that failure to deliver a copy of the budget and annual assessments amount shall not affect the liability of Owners for assessments. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Property or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Property or assessments for public improvements to the Common Property, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof,

but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 11. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 12. WORKING CAPITAL ASSESSMENTS. In addition to the annual and special assessments authorized above, at the time of the closing of the first sale of each Lot to a person or entity other than an Affiliate or a Builder, the purchaser(s) thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assessment established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and these Bylaws.

## ARTICLE V

### ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant, for so long as Declarant or any Affiliate owns any Lot or Declarant has the right to annex any Additional Property pursuant to Section 4, Article XII hereof, and thereafter by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board (the "Architectural Control Committee"). Notwithstanding the foregoing, landscaping improvements consisting of plant materials native to the area and commonly used in residential landscaping which do not interfere with the sight lines of motorists at intersections of the streets and/or driveways located within the Properties shall not require approval by Declarant, the Board of Directors or the Architectural Control Committee, as the case may be. In addition,

notwithstanding the foregoing, Declarant may at any time hereafter elect to assign to the Association all or any of its architectural review rights or obligations hereunder, all of which rights and obligations are assignable and may be apportioned. Any such assignment by Declarant shall be in writing and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. From and after the effective date of such assignment, the Association shall assume all such assigned architectural review rights and obligations.

## SECTION 2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Association and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the right of Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval.

(c) Neither Declarant, nor any other member of the Association's Board of Directors or Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specification approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Board of Directors or Architectural Control Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specification or the exercise of any other power or right provided for in this Declaration. Every Person who submits plans or specifications for approval agrees, by submission of such plans

and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Board of Directors or Architectural Control Committee, to recover any such damage.

## ARTICLE VI

### EXTERIOR MAINTENANCE

SECTION 1. ASSOCIATION TO MAINTAIN COMMON PROPERTY. The Association shall maintain the Common Property. The Association shall maintain any retention or detention ponds and any erosion control devices now or hereafter located on any Common Property that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such pond or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such pond or erosion control device.

SECTION 2. OWNERS TO MAINTAIN LOTS. Each Owner shall be responsible for the exterior maintenance of his or her dwelling and Lot, as follows: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, driveways, walks and other exterior improvements. In the event that the Owner neglects or fails to maintain his or her improved Lot and/or the exterior of his or her dwelling in a manner consistent with other improved Lots and dwellings in Scotts Mill or fails to maintain his or her improved Lot in a safe condition and free of debris, the Association may provide such exterior maintenance. Provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a manner consistent with other Lots and dwellings in Scotts Mill shall be made by the Board of Directors of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in the Article. In the event the Association performs such exterior maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

## ARTICLE VII

## RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE. No Lot shall be used except for residential, street or park purposes; provided, however, Declarant or an Affiliate may use any Lot owned or leased by Declarant or an Affiliate as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of property in Scotts Mill.

SECTION 2. NUISANCE. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot or other area within Scotts Mill shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture.

SECTION 3. MOTOR VEHICLES. No boat, marine craft, hovercraft, aircraft, trailer, camper, truck greater than one ton in size or motorized van used for commercial purposes (as distinguished from a van used as a passenger car) shall be parked within the right of way of any public or private street adjacent to any Lot or on any Lot, except that any of the above may be parked completely inside a garage, or in the sole discretion of the Board of Directors or the Architectural Control Committee, on a Lot in a location otherwise sufficiently screened from any adjacent Lot or street. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity of the parking area. No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, and pick-up trucks that are in operable condition and have current license plates and inspection stickers. No inoperative motor vehicle may be parked or stored on any Lot or any public or private street or other area within the Properties for a period in excess of 48 hours.

SECTION 4. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on the Common Property or 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 kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with (i) all laws and ordinances of the State of North Carolina, the County of Wake and the Town of Apex relating thereto; and (ii) such rules and regulations pertaining thereto as the Board of Directors may adopt from time to time.

SECTION 5. OUTSIDE ANTENNAS. Except for "dish A" antennas designed to receive direct broadcast satellite service, including direct to home satellite services, one meter (39") or less in diameter, antennas designed to receive video programming services

via MMDS (wireless cable) and antennas designed to receive television broadcast signals, no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot or dwelling within the Properties except with the prior written permission of Declarant, for so long as Declarant or any Affiliate owns any Lot or Declarant has the right to annex any Additional Property pursuant to Section 4, Article XII hereof, and thereafter only with the prior written permission of the Board of Directors of the Association or the Architectural Control Committee. Except as otherwise reasonably required in order to receive the intended signal, any antenna or satellite dish erected on any Lot or dwelling within the properties shall be affixed to the dwelling, shall be a color that blends with its surroundings, shall have a mask only as high as reasonably necessary to receive the intended signal and shall not be visible from any street.

SECTION 6. SUBDIVISION OF LOTS; STREETS. Except as permitted under Article I, Section 6, no Lot shall be subdivided and no street shall be laid out or open across or through any Lot, without the prior written consent of Declarant, for so long as Declarant or any Affiliate shall own any Lot or Declarant shall have the right to annex any Additional Property pursuant to the provisions of Section 4, Article XII hereof, and thereafter except with the prior written consent of the Association's Board of Directors or its Architectural Control Committee. The Owners of adjoining Lots, however, may vary the boundary lines between their Lots, provided such subdivision is accomplished in compliance with all applicable subdivision.

SECTION 7. SIGNS. No sign shall be placed or allowed to remain on any Lot except for ONE (1) "For Sale" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than SEVENTY TWO (72) consecutive hours. No sign deemed by the Association, the Architectural Control Committee or Declarant to be a nuisance or a detriment to Scotts Mill shall be permitted to be erected or to remain on any Lot. Notwithstanding the foregoing, for so long as Declarant or any Affiliate shall own any Lot or Declarant shall have the right to annex any Additional Property pursuant to the provisions of Section 4, Article XII hereof, Declarant and any Affiliate shall have the right to erect and maintain signs within the Common Property or on any Lot owned or leased by Declarant or any Affiliate for the purpose of advertising and promoting the development and sale of Lots within Scotts Mill and any Builder, with the express consent of Declarant, shall have the right to erect and maintain signs on any Lot owned by such Builder for the purpose of displaying necessary building permits and/or advertising and promoting the sale of such Lot.

SECTION 8. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home

shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. No metal storage building, whether of a temporary or permanent character, shall be permitted on any Lot. Notwithstanding the foregoing, Declarant, any Affiliate and Builders or contractors authorized by Declarant or any Affiliate may maintain temporary improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

SECTION 9. FENCES OR WALLS. No fence, wall or other enclosure shall be constructed on any Lot without first obtaining the approval of Declarant, the Board of Directors of the Association or the Architectural Control Committee as provided in Article V of this Declaration. No portion of any fence erected on any Lot may exceed six (6) feet in height, or such lesser height as may be established by Declarant, the Board of Directors or the Architectural Control Committee, as the case may be, in reviewing and approving plans and specifications for such improvements in accordance with the provisions of Article V hereof and thereafter applied on a uniform basis, and chain link fences are not permitted. Notwithstanding the foregoing, Declarant, its successors and assigns, the Association and any Neighborhood Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Property or any Neighborhood Common Property to enclose retention ponds and for other purposes.

#### ARTICLE VIII

##### RULES AND REGULATIONS

The Board of Directors of the Association may establish reasonable rules and regulations concerning the use of the Common Property and improvements located thereon. Such rules and regulations may prohibit the use of any lake or pond which is a part of the Common Property for boating, fishing and swimming and/or may provide for access to any such lake or pond only through designated portions of the Common Property. The rules and regulations of the Association may provide for the imposition of reasonable monetary fines, the suspension of voting rights and other sanctions for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines may be collected by lien and foreclosure as provided in Article IV. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Board of Directors of the Association.

or by the Association with the approval of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members who are voting, in person or by proxy, at a regular or special meeting of the Members of the Association.

#### ARTICLE VIX

##### PROPERTIES SUBJECT TO NEIGHBORHOOD COVENANTS

SECTION 1. NEIGHBORHOOD COVENANTS. Declarant or any Affiliate, in its sole discretion, may subject portions of the Properties to neighborhood covenants, conditions, easements and restrictions ("Neighborhood Covenants"). Any such Neighborhood Covenants may provide for the creation of additional homeowners associations (Neighborhood Associations") for the further protection, control and maintenance of that portion of the Properties subject thereto and may provide for the payment of additional assessments by the owners of lots within that portion of the Properties subject thereto.

SECTION 2. COLLECTION OF ASSESSMENTS BY NEIGHBORHOOD ASSOCIATIONS. At the request of any Neighborhood Association, the Association, in the sole discretion of its Board of Directors, may authorize such Neighborhood Association, for the convenience of its members, to collect on behalf of the Association the assessments levied hereunder against those portions of the Properties subject to assessment by such Neighborhood Association, all such assessments collected to be remitted by such Neighborhood Association to the Association on or before the date due. In addition, the Association, in the sole discretion of its Board of Directors, and with the consent of such Neighborhood Association, may appoint a Neighborhood Association attorney-in-fact for the Association or otherwise authorize a Neighborhood Association to enforce the collection of assessments levied by the Association, including, without limitation, the enforcement of the lien of the Association securing such assessments; provided, however, no such appointment or authorization shall in any way modify, diminish, annul or cancel the personal liability of such owner for the payment of assessments hereunder or the Association's lien against each Lot which secures such payment.

SECTION 3. NEIGHBORHOOD SERVICES. At the request of any Neighborhood Association, the Association, in the sole discretion of its Board of Directors, may contract with such Neighborhood Association to provide, subcontract or otherwise arrange for the delivery of services to such Neighborhood Association, which services may include, but shall not be limited to, the landscaping and maintenance of Neighborhood Common Property and the collection of assessments levied by the Neighborhood Association, all as may be agreed to by the Association, in the sole discretion of its Board of Directors, and the Neighborhood Association. Any such contract shall provide for the payment by such Neighborhood Association to the Association of all costs incurred by the Association in the delivery of such services, together with a reasonable administration fee, and may be subject to such further

terms and conditions as the Association, in the sole discretion of its Board of Directors, and the Neighborhood Association may agree.

## ARTICLE X

### EASEMENTS

**SECTION 1. UTILITY AND DRAINAGE EASEMENTS.** An easement is hereby established for the benefit of the appropriate governmental authority over all Common Property as may be reasonably necessary for the maintenance and replacement of water, sewer, power, cable, drainage and other facilities to serve the Common Property or other portions of Properties (including the setting, removal and reading of water meters) and for the fighting of fires and the collection of garbage from the Common Property or other portions of the Properties. The Association shall have the power and authority to grant and establish upon, over and across the Common Property such additional easements as are necessary or desirable for providing services or utilities to the Common Property or other portions of the Properties.

**SECTION 2. SIGN EASEMENTS.** Declarant and any Affiliate for so long as Declarant or any Affiliate owns any Lot or Declarant has the right to annex any Additional Property pursuant to Section 4, Article XII hereof, and thereafter the Association, shall each have the right to erect within the Common Property subdivision signs announcing Scotts Mill or any residential community which is a part of Scotts Mill and fencing, landscaping and lighting and irrigation systems surrounding same. The costs of all maintenance, repair and replacement of any such signs, fencing, landscaping and lighting and irrigation systems shall be part of the common expenses of the Association, payable by the Owners as set out Article IV hereof. In addition, Declarant and any Affiliate for so long as Declarant or any Affiliate owns any Lot or Declarant has the right to annex any Additional Property pursuant to Section 4, Article XII hereof owns, shall each have the right to erect within the Common Property signs advertising the sale and promotion of Lots or any portion of the Additional Property, as hereinafter defined. The cost of all maintenance, repair and replacement of such signs shall be the responsibility of the party erecting such signs. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

**SECTION 3. EASEMENT RESERVED BY DECLARANT.** Declarant, for and on behalf of itself, any Affiliate hereby reserves such easements on, across and over the Common Property as shall be reasonably necessary for (i) the exercise by Declarant or any Affiliate of any right herein reserved, and (ii) the development by Declarant or any Affiliate of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected within the

Common Property and easements for the use and extension of all utility lines, fixtures and/or their connections located within the Common Property for the purpose of providing water, sewer, light, power, telephone, cable and other services to the Additional Property.

SECTION 3. BUFFER EASEMENTS. Declarant does hereby grant and convey to the Association as Common Property a perpetual, non-exclusive right, privilege and easement on, over and upon all that land now or hereafter designated on any recorded subdivision map or plat of the Properties as "LANDSCAPE BUFFER" or "BUFFER" for the purpose of erecting, maintaining, repairing and replacing landscaping, entranceway signs announcing Scotts Mill or any residential community within Scotts Mill, fences, retaining walls and lighting and irrigation systems, all at the election of the Association. Within these easements no structures, planting or other material shall be placed or permitted to remain, except with the express consent of the Association and in accordance with the terms and provisions of Article V of this Declaration.

TO HAVE AND TO HOLD all of the above-described rights and easements unto the Declarant, the Association or the appropriate governmental entity or utility authority, as the case may be, their respective successors and assigns, forever.

#### ARTICLE XI

##### RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation

of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Properties or any portion thereof.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Properties, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE XII

### GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

**SECTION 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereinafter provided. This Declaration may be terminated or amended during the first twenty year period with the consent of the Owners entitled to cast at least ninety percent (90%) of the votes of the Association voting in person or by proxy, at a meeting duly called for such purpose, and thereafter with the consent of the Owners entitled to cast at least seventy-five percent (75%) of the votes of the Association voting in person or by proxy, at a meeting duly called for such purpose; provided, however, this Declaration may not be terminated without Declarant's consent for so long as Declarant or any Affiliate owns any Lot or Declarant may annex Additional Property pursuant to the provisions hereinafter set forth, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant, and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Wake County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds.

**SECTION 4. ANNEXATION.**

(a) Except as provided in Subsection (b) of this Section 4, Article XII, additional residential property and Common Property and Neighborhood Common Property may be annexed to the Properties only with the consent of the Members entitled to cast two-thirds (2/3) of the votes of each class.

(b) Additional land within the area described in the metes and bounds description attached hereto as EXHIBIT A and incorporated herein by reference, together with any other property located adjacent to the Properties (collectively, the "Additional Property") may be annexed by the Declarant without the consent of Members within twenty (20) years of the date of this instrument, provided that, in the event FHA or VA insured loans have been

obtained to purchase Lots, FHA and VA determine that the annexation is in accord with the general plan from time to time approved by them. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as Declarant may deem necessary or convenient; provided, however, such additions and/or modifications shall not modify this Declaration with respect to the properties previously subjected thereto, and, in the event FHA or VA insured loans have been obtained to purchase Lots, FHA and VA determine that any such complimentary additions and/or modifications are in accord with the general plan from time to time approved by them. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

SECTION 5. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs provided that FHA or VA loans have been obtained to purchase Lots: annexation of additional properties, dedication of Common Property and amendment of this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or the Bylaws of the Association.

SECTION 6. AMPLIFICATION. The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 21<sup>st</sup> day of November, 1996.

Stratford Woods, LLC, a North Carolina limited liability company [SEAL]

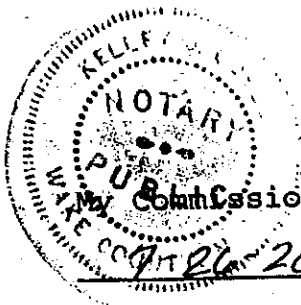
 (SEAL)  
David Sigler, Manager

 (SEAL)  
Larry Morello, Manager

STATE OF NORTH CarolinaCOUNTY OF Wake

I, Kelley Odell, a Notary Public within and for said County and State, do hereby certify that David Sigler personally came before me this day and acknowledged that he is a Member Manager of Stratford Woods, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, said writing was signed and sealed by him on behalf of said company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official seal this 21<sup>st</sup> day of November 1996

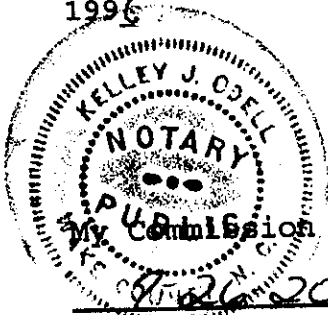


Kelley Odell  
Notary Public

STATE OF NORTH CarolinaCOUNTY OF Wake

I, KELLEY ODELL, a Notary Public within and for said County and State, do hereby certify that Larry Morello personally came before me this day and acknowledged that he is a Member Manager of Stratford Woods, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, said writing was signed and sealed by him on behalf of said company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official seal this 21<sup>st</sup> day of November 1996



Kelley J. Odell  
Notary Public

## NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Kelley J. Odell

Notar(y)(ies) Public

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

LAURA M. RIDDICK, Register of Deeds

By

[Signature]  
Asst./Deputy Register of Deeds

## EXHIBIT A

TRACT I: BEING all of Lots 1, 2 and 3, containing 103.799 acres, as shown on plat of survey entitled "Recombination Plat Survey for Fred G. Cash, Jr." by Smith and Smith Surveyors, dated June 19, 1995 and recorded in Book of Maps 1995, Page 1008 Wake County Registry.

TRACT II: BEING all of Lot 2, containing 86.110 acres, as shown on plat of survey entitled "Recombination Survey for Fred Cash, III, et al." by Smith and Smith, Surveyors, dated July 3, 1995 and recorded in Book of Maps 1995, Page 1090, Wake County Registry.