

Return To: Henry W. Jones, Jr.
P. O. Box 2021
Raleigh, NC 27602

BK6117PG0325

STATE OF NORTH CAROLINA
COUNTY OF WAKE

000104

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR WALDEN CREEK

PRESENTED
FOR
REGISTRATION
MAY 5 AM 9:05

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

THIS DECLARATION, made this 5th day of May, 1994

Properties, L.L.C., a North Carolina Limited Liability Corporation,
hereinafter called "Declarant", with its principal office in
Raleigh, Wake County, North Carolina.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described
on Exhibit "A" attached hereto, and desires to create thereon and
on other adjacent lands an exclusive residential community to be
known as "Walden Creek; and,

WHEREAS, in order to provide a coordination and continuity
among the various phased communities, the owners of dwelling units
in those communities, it is deemed appropriate to have an
association in which all owners in Walden Creek are members; and,

WHEREAS, Declarant desires to have certain areas of the
Development owned by this Association and benefit all owners within
the Development; and,

WHEREAS, Declarant desires that some open spaces, streets,
roads, walkways and other facilities be owned and maintained
exclusively for the benefit of each local community and be
designated "COMMUNITY COMMON PROPERTIES"; and,

WHEREAS, Declarant has deemed it desirable for the efficient
preservation, protection and enhancement of the values and
amenities in Walden Creek, and to insure the residents' enjoyment

of the specific rights, privileges and easements in the Community Common Properties and facilities to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the community Common Properties, facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated under the laws of the State of North Carolina, as a non-profit corporation, Walden Creek Homeowners Association, Inc., for the purpose of exercising the functions aforesaid within the community known as Walden Creek.

NOW THEREFORE, the Declarant declares that the lands described upon Exhibit "A" attached hereto, and all other lands within Walden Creek that are subjected by Declarant to the lien of this Declaration, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration or amendment hereto (unless the context shall prohibit) shall have the following meanings:

(a) "Walden Creek" shall mean and refer to the lands described upon Exhibit "A" attached hereto and such other lands that are subjected by Declarant to the lien hereof.

(b) "Association" shall mean and refer to Walden Creek Homeowner's Association, Inc., its successors and assigns.

(c) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina.

(d) "Property" or "Properties" shall mean and refer to the lands described upon Exhibit "A" attached hereto and all other lands that are subjected by Declarant to the lien hereof.

(e) "Community Common Property" of "Common Area" or "Common Property" shall mean and refer singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by, or located in an easement granted to or reserved by, the Association and which has/have been designated by Declarant or the association as "Community Common Property", "Common Area", "Open Space", "Greenway", "Buffer" or some other, similarly descriptive term, on a recorded plat, in a Supplemental Declaration, or in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as

Common Property by the Declarant or the Association. All Common Area or Community Common Property shall be subject to the terms and conditions of this Declaration. Common Property also may include, as determined by Declarant in its sole discretion, all water retention ponds and areas, if any, including all facilities, structures and improvements associated therewith, required to be constructed, repaired, replaced or maintained within the Properties by the laws, rules or regulations of any governmental authority having jurisdiction thereof.

(f) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family residence and shall include single family residences, condominium units, townhouses, villas, and any other single family dwelling unit located on the Properties, including attached or detached units.

(h) "Member" shall mean and refer to an "Owner" subject to assessment as provided in this Declaration.

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

(j) "Declarant" shall mean and refer to Apex Properties, L.L.C., its successors and assigns to whom the rights and

privileges of Declarant are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose, if such successors or assigns should acquire more than one undeveloped Lot or Living Unit location for the purpose of development. The development of a Lot or Living Unit site shall mean and refer to the construction of a residence thereon, including a condominium unit.

(k) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plot recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration as it may be amended, but shall not include any Lot so excluded on any recorded map or Community Common Properties.

(l) "Access Area" shall mean and refer to the areas designated as such on the various maps of Walden Creek.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject To Declaration. The Properties are hereby made subject to this Declaration and the Properties shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

Section 2. Existing Property. The real property which hereby is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described in Article I, Section 1.(a) hereof.

Section 3. Mergers. Upon a merger or consolidation of the Association with another organization as provided by its By-Laws, its properties, rights and obligations may be transferred to another surviving or consolidated Homeowner's Association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowner's corporation may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

ARTICLE III

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article III, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3)

of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Within five (5) years of the date of incorporation of the Association, the Declarant, its successors and assigns, shall have the right to bring within the plan of operation of this Declaration of Covenants, Conditions and Restrictions additional later acquired contiguous properties at future stages of development without the consent of the members. Such additional properties authorized in this Declaration shall be made by filing in the Wake County Registry a Declaration of Annexation with respect to the additional properties and same shall extend the operation and effect of this Declaration to such additional properties.

ARTICLE IV

MEMBERSHIP

Section 1. Those Entitled To Membership. Every person or entity which is a record owner of a fee or undivided interest in any Lot, or Living Unit which is subject to this Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, or Living Unit which is subject to assessment by the Association. Ownership of such Unit shall be the sole qualification for membership.

ARTICLE V

VOTING RIGHTS

Section 1. Classes of Voting Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all those Owners as defined in ARTICLE III with the exception of the Declarant (as defined in this Declaration). Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership by ARTICLE III. When more than one person holds such interest in any Lot, or Living Unit, all such persons shall be members, and the vote for such Lot or

Living Unit shall be exercised as the majority of such persons among themselves determine. At any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such Lot or Living Unit shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration). The Class B member(s) shall be entitled to three (3) votes for each Lot and Living Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, such additional lands are annexed to the Property without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article III above, or

(b) Nine years following the conveyance of the first living unit to an Owner.

Section 2. Membership Sub-Classes. The Board of Directors of the Association shall have authority to, and is hereby authorized, at its discretion to create membership sub-classes of those who are Class A members and to designate and to delineate sub-membership areas within the Development, each such sub-membership classification and area delineation shall consist of Owners of like or similar type dwelling units, such as, Owners of all townhouses or a particular group of townhouses, Owners of all condominium units or a particular group of condominium units and so forth for each type of dwelling unit.

Section 3. Purpose of Sub-Classes. Sub-classes of Class A membership may be designated by the Board of Directors for the purpose of establishing special assessment districts among similar class members because of a need, or obligation of any such designated membership sub-classification to pay assessments which may differ from those required of other sub-classifications based on the obligation upon the Association to provide differing degrees of care and maintenance to the several sub-classification membership areas.

ARTICLE VI

PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTIES

Section 1. Owners' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Community Common Properties, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on

and over the drives, walkways and parking areas of the Community Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot, and Living Unit and subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Community Common Properties;

(b) the right of the Association to suspend the voting rights and right to use the recreational or other Community Common Properties facilities by an Owner for any period during which any assessment against his Lot, or Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate, sell or transfer all or any part of the Community Common Properties, to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless it has been approved by sixty-seven (67%) percent of each class of members and an instrument properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that sixty-seven (67%) percent of each class of members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided,

however, conveyances for general utility purposes as specified herein may be made without consent of the members;

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

(e) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Community Common Properties and facilities and in aid thereof to mortgage said properties, and the rights of such mortgages in said properties shall be subordinate to the rights of the Members hereunder;

(f) the right of the individual members to use of parking spaces as may be provided by the Board of Directors;

(g) the right of the Association in accordance with its Articles of Incorporation or By-Laws to impose rules and regulations for the use and enjoyment of the Community Common Properties and improvements thereon, which rules and regulations may further restrict the use of the Community Common Properties.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Community Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Community Common Properties. Declarant shall dedicate Phase by Phase and convey to the Association (by deed without warranty at Declarant's option) fee

simple title to all real property portions of the Community Common Properties to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easements and encumbrances (not constituting a lien to secure the payment of money) and mineral interests outstanding and of record in Wake County, North Carolina, and the terms and conditions of this Declaration and any applicable Supplemental Declaration, on or (at Declarant's sole option) prior to December 31, 2003.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, and Living Unit owned within the Properties, hereby covenants, and each Owner of any Lot, and Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments against the Community Common Properties and for improvement and maintenance of public roads if the Association shall default in payment thereof, all as hereinafter provided. The annual and special assessments, together with interest, late fees, and costs, and reasonable attorney's fees for collection, shall be a charge on the land and

shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on any Lot, and Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities, and for the use and enjoyment of the Community Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Community Common Properties, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of

counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment and Annual Assessment.

Through and including December 31, 1995, the maximum annual assessment shall be \$300.00 per Lot or Living Unit.

(a) The maximum annual assessment for the calendar year beginning January 1, 1995, and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed twelve percent (12%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 1996, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(c) Subject to the provisions of this Article VII, the Board may fix the annual assessment at any amount not in excess

of the maximum annual assessment allowed for the applicable calendar year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Community Common Properties, or any extraordinary maintenance of any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven (67%) percent of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the propose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) 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 (60%) percent 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. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, and Living Units and may be collected on a monthly basis. However, if sub-classes of membership are created by the Board of Directors such assessments shall be fixed at uniform rates for all Lots or Units within any sub-class. Assessments may differ between areas having different sub-classes of membership. Assessments with respect to a sub-class of membership shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to the sub-classes of memberships. Provided, however, that the assessment for Lots, or Living Units owned by Declarant shall be twenty-five (25%) of the assessments for other Lots or Living Units upon which assessments are due.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein commence as to all Lots, and Living Units on the date fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot, and Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed

by an officer of the Association setting forth whether the assessments on a specified Lot, or Living Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or Unit is binding upon the Association as of the date of issuance.

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 highest rate then permitted by North Carolina law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Common Properties or abandonment of his Lot or Living Unit.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot, or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot, or Living Unit pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such

Lot, or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to and accepted by, a local 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.

ARTICLE VII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Properties, the Community Common Properties and the Common Area. Such rules and regulation may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorney's fees.

Section 2. Use of Properties. No portion of the Properties (except for the temporary offices of the Declarant and other

builders and/or model units used by the Declarant and other builders and construction materials, storage, equipment, signs and parking of Declarant and other builders) shall be used, except for residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. 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 kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

Section 5. Obstructions, etc. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of Declarant or the Association. Provided, however, Declarant and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its powers and duties under this Declaration.

Section 6. Signs. No sign of any kind shall be displayed to the public view on any Lot except for signs which are approved by Declarant and which are for one or more of the following purposes: (i) advertising the Lot for sale or rent, (ii) advertising the building contractor constructing improvements on the Lot during the initial construction and sales period. (iii) identifying the sales office and/or model home of a building contractor who owns the Lot; (iv) identifying the subdivision or phase name and/or identifying the Lot number of a Lot; and (v) any other purpose approved by the Declarant (or by the Architectural Control Committee after the Class B membership terminates); provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Lot or on the Common Area, Landscaped Rights-of-Way, Roadway Medians and in any easements reserved or granted for such purposes, signs and billboards advertising the Property, the Properties or portions of either, or signs identifying various subdivisions or phases of the project, or regulatory, street and directional signs. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

ARTICLE VIII

EASEMENTS

Section 1. Utility Easements. All of the Properties, including Lots, Living Units, Community Common Properties and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Community Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties without approval of the membership as provided in the Articles of Incorporation, Article IV(e).

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement and the same is hereby granted by the declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, or any other cause. There shall be valid easements for the maintenance of said encroachment, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of said Owner.

Section 3. Unintentional Encroachments. In the event that any Lot, or Living Unit shall encroach upon any Community Common Properties or upon any other Lot, or Living Unit for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot or Units shall exist for the continuance and maintenance of such encroachment upon the Community Common Properties or other Lot or Units for so long as such encroachment shall naturally exist; and, in the event that any portion of the Community Common Properties shall encroach upon any Lot, or Living Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Community Common Properties onto any such Lot, or Living Unit for so long as such encroachment shall naturally exist.

Section 4. Overhanging Roofs and Eaves. Each Lot, and Living Unit within the Properties and the Owner thereof, is hereby declared to have an easement and the same is hereby granted by the Declarant, over each joining Lot, and Living Unit and/or Community Common Properties, as the case may be, for overhanging roofs and eaves and the maintenance thereof.

Section 5. Easement for the Benefit of the Town of Apex. An easement is hereby established for the benefit of the Town of Apex, over all Community Common Properties for the setting, removing and reading of water meters (which shall be separate for each living unit), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection and the rendering of such other services as are

appropriate and necessary for the use and enjoyment of the Properties. In no case shall the Town of Apex be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Developer, the Association, the Owners or occupants. All conveyances of any portion of the Properties shall be subject to these limitations on the City's or other agency's responsibilities.

Section 6. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Community Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Properties or any portion thereof.

ARTICLE IX

INSURANCE

Section 1. Insurance to be Maintained by the Association.
The following insurance coverage shall be maintained in full force and effect by the corporation:

- (a) Property damage insurance at one hundred (100%) percent of the current replacement cost of the Community Common Properties, excluding those areas that are normally

excluded from coverage such as land, foundation, excavation, etc. The property damage policy must protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all-risk" endorsement.

- (b) Public liability insurance covering all Community Common Properties and any other areas that are under the Association's control and supervision in an amount of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. All liability insurance shall contain cross liability endorsements to cover liability of the owners as a group to an individual owner.
- (c) The Association shall also maintain blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association's bonds will name the Association as the obligee and the fidelity bond coverage must at least equal the sum of three (3) months assessments on all units in the project, plus the Association's reserved funds.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and

charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Insurance to be Maintained by the Owners. Every Owner shall maintain in full force and effect at all times such insurance required by any other association of homeowners of which it is a member.

ARTICLE X

ELECTRICAL SERVICE

Declarant reserves the right to subject the Properties to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each lot within the Properties.

ARTICLE XI

ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls and other structures, shall be undertaken upon the Properties, unless the plans and specifications therefore, showing the nature, kind, shape, height,

materials, and location of the proposed improvements shall have been submitted to Declarant and expressly approved in writing by it. No subsequent alteration or modification of improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an "Architectural Committee" composed of three (3) or more representatives appointed by the Board.

In the event that the Declarant, or the Board of Directors or Architectural Committee, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval of the submitted items will be deemed granted, and the requirements of this Article will be deemed to have been fully met; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant, Association, or Architectural Committee, as the case may be, if they contain inaccurate or erroneous information or fail to present adequate information upon which the Declarant or the Board of Directors or Architectural Committee, as the case may be, can arrive at a decision.

The Declarant shall have the right, at its election, but shall not be required to, enter upon any of the Properties during site preparation or construction, erection or installation of improvements to inspect the work being undertaken, and to determine that such work is being performed in conformity with the approved

plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE XII

EXTERIOR MAINTENANCE

It shall be the duty of each Owner to properly maintain his Lot and all improvements constructed on such Lot. If, however, in the opinion of the Association, any Owner shall fail to maintain any Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep the improvements constructed thereon in a state of repair so as not to be unsightly, the Association in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to the Owner, may enter upon and make, or cause to be made, repairs to such improvements and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, and seeding and correction of items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering all such services, plus a service charge of fifteen (15%) percent of such costs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE XIII

GENERAL PROVISIONS

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

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

time by an instrument signed but not less than seventy-five (75%) percent of the Members.

(b) The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the Members: (1) Prior to the sale of the first Lot or living Unit, this Declaration may be amended by the Declarant. (2) Declarant may amend this Declaration upon annexation of additional lands as specified in Article III herein. (3) The Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction. (4) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property. (5) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the

Association or the Property, or any portion thereof, for tax exempt status.

(c) An amendment which would change or delete any provision herein required by any governmental authority shall not become effective until submitted to and approved by that authority; provided however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

(d) Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 4. Recreational Facilities. The preliminary plan for Walden Creek provides for recreational amenities within the Community Common Properties. These proposal amenities may be provided for the benefit of all Owners, and would be maintained, as part of the Community Common Properties out of Assessments imposed on all Owners; provided however, the Declarant shall have the right to retain ownership of the recreational facilities, and assign to an operator or other contractor the maintenance and operation of the recreational facilities, on a for profit or non-profit basis and upon such terms and conditions, not inconsistent herewith, as the Declarant may deem reasonable and necessary. The Declarant may charge dues or membership fees sufficient to defray operating costs and require that current payment be made in order for any Owner to enjoy use of the facilities. The Declarant may also permit use of the facilities by non-Owners and non-residents of the properties,

upon payment of required dues or membership fees, and subject to priority of Owners in good standing with the Declarant and Association. The Declarant may impose reasonable regulations regarding the use of the facilities to insure accessibility, safety, harmony, and preservation of the facilities.

Section 5. Availability of Documents. The Association will have current copies of the Declaration, By-Laws, and other rules concerning Walden Creek as well as the Association's own books, records and financial statements available for inspection during normal business hours by owners and by holders, insurers and guarantors of first mortgages that are secured by living units in Walden Creek.

Section 6. Rights of Eligible Mortgage Holders. Eligible Mortgage Holders are those holders of a first mortgage or deed of trust on a living unit ("Eligible Mortgages") who have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. Amendments of a material nature to this Declaration or the By-Laws of the Association require the approval of Eligible Mortgage Holders representing at least fifty-one (51%) percent of the holders of Eligible Mortgages. Any action to terminate this Declaration or the legal status of the Association for reasons other than substantial destruction or condemnation of the Property, shall require the approval of Eligible Mortgage Holders representing at least sixty-seven (67%) percent of the holders of Eligible Mortgages.

The holder, insurer, or guarantor of a mortgage or deed of trust on any living unit in Walden Creek is entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of Walden Creek;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage or deed of trust.
- (c) A lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. To obtain this information, the mortgage holder, insurer, or guarantor should send a written request to the Association, stating both its name and address and the unit number or address of the unit covered by its mortgage or deed of trust.

Section 7. Condemnation. Whenever all or any part of the Community Common Property shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided. If at least sixty-seven (67%) percent of the members of the Association shall decide within sixty (60) days after such

taking to replace any condemned improvements, or any part thereof on the remaining lands which re part of the Community Common Properties, then the Board of Directors of the Association shall arrange for such replacements, and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amount shall correspond with the disproportionate damages sustained by the members, or any one or more of them, as the Association may determine. If at least sixty-seven (67%) percent of the members of the Association shall not decide within sixty (60) days after such taking to replace such improvements, or if the taking is confirmed to Community Common Properties on which no improvements have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements.

Section 8. 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.

Section 9. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 10. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot's or the Common Area.

Section 11. Subdivision Covenants. It is contemplated by Declarant that within the Properties there will be a number of separate, district residential subdivisions or sections that will be subjected to this Declaration. It is further contemplated by Declarant that, because of varying lot sizes, marketing considerations and other factors, it may be necessary or desirable to impose additional and different covenants, conditions and restrictions on such subdivisions or sections which are applicable solely to such subdivision or section. Accordingly, in addition to any other rights reserved to Declarant herein, Declarant further reserves the right to subject such subdivisions and sections to additional and different subdivision restrictive covenants as Declarant, in its discretion, may from time to time determine. This right also includes the right to subject more than one subdivision or section to the same subdivision restrictive covenants.

Section 12. Subdivision, Combination of Lots. No Lot shall be subdivided without the written consent of Declarant. One or

more Lots may be combined into a single Lot with the written consent of Declarant 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 (which is hereby reserved) of Declarant to subdivide, combine, resubdivide, recombine, or re-record maps relating to, any Lots subject to this Declaration.

Section 13. Conflict Between Declaration and Articles of Incorporation. Bylaws. Whenever there exists a conflict between the provisions of this Declaration and the Articles of Incorporation or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles of Incorporation and Bylaws, the provisions of the Articles of Incorporation shall control.

Section 14. Laws of North Carolina. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

Section 15. Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any Supplemental Declaration.

BK6117PG0361

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5th day of May, 1994.

Apex Properties, L.L.C.

By: William T. Barker, Jr. (SEAL)
William T. Barker, Jr.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and state aforesaid, certify that William T. Barker, Jr., manager, personally appeared before me this day and acknowledged that he is manager of Apex Properties, L.L.C., a North Carolina limited liability company, and that by authority duly given and as an act of the company, the foregoing instrument was signed by him.

Witness my hand and official stamp or seal, this 5th day of May, 1994.

Judith M. Moore
Notary Public



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NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of

Judith M. Moore

Notary 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.

KENNETH C. WILKINS, Register of Deeds

By Barbara Wilkins
Deputy Register of Deeds

EXHIBIT A

Beginning at an existing iron pipe located in the western right-of-way line of N.C. Highway 55, a 150' right-of-way, said pipe having North Carolina Grid Coordinates N=728,854.44 and E=2,038,308.45, said pipe also marking the northeast corner of Tract B as shown on that plat recorded in Book of Maps 1894, page 258, Wake County Registry; runs thence along the line of Tract B the following courses and distances: North 89° 29' 50" West 300.00 feet to an existing iron pipe; South 00° 29' 57" West 854.01 feet to an existing iron pipe; South 84° 18' 16" West 1,343.93 feet to an existing iron pipe; and South 22° 36' 39" West 349.99 feet to an existing iron pipe located in the northern right-of-way line of Green Level Church Road (NCSR 1600); runs thence along the northern right-of-way line of Green Level Church Road the following courses and distances: North 58° 43' 17" West 88.13 feet to a point; North 60° 43' 47" West 108.02 feet to a point; North 61° 48' 17" West 210.75 feet to a point; and North 62° 10' 09" West 699.99 feet to an existing iron pipe marking the southwest corner of property belonging to Marie H. Morris, now or formerly; runs thence along the eastern line of the Marie H. Morris property North 02° 23' 53" East 961.40 feet to an existing iron pipe; runs thence along the northern line of the Marie H. Morris property South 89° 55' 07" West 98.60 feet to an existing iron pipe marking the southeast corner of property belonging to David H. Morris, now or formerly; runs thence along the eastern line of the David H. Morris property North 01° 41' 07" West 535.99 feet to an existing iron pipe located in the southern line of property belonging to Texas Instruments Employees Pension & Trust Properties, NationsBank, Trustee, now or formerly; runs thence along the southern line of the Texas Instruments property South 89° 31' 06" East 2,904.19 feet to an existing iron pipe located in the western right-of-way line of N.C. Highway 55; runs thence along the western right-of-way line of N.C. Highway 55 South 08° 36' 52" West 271.65 feet to an existing right-of-way monument, and South 04° 50' 54" West 421.83 feet to an existing iron pipe, the point and place of Beginning, containing 100.28 acres, all according to that survey entitled "Property of Apex Properties, L.L.C.", dated March 24, 1994 and prepared by Smith and Smith Surveyors.