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DECLARATION
Kenneth L. Eagle (ROD Box 215)

DECLARATION

FOR

HIGHCROFT P.U.D.

(f:\keagle\highcroft\dec5)

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OF
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FOR HIGHCROFT P.U.D.**

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION FOR
HIGHCROFT P.U.D.**

THIS **DECLARATION FOR HIGHCROFT P.U.D.** is made this 28th day of May, 2003, by **IMPACT PROPERTIES GROUP, LLC**, a North Carolina limited liability company, also referred to herein as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the real property in the Town of Cary, Wake County, North Carolina described on **Exhibit A** attached hereto and incorporated by reference, all of which constitutes the "Existing Property";

AND WHEREAS, Declarant intends to develop the Existing Property, together with any Additional Property annexed to this Declaration, into a planned unit development under the applicable ordinances of the Town of Cary, North Carolina, to be known as Highcroft Planned Unit Development (which also may be referred to herein as "Highcroft P.U.D.", the "Community", or the "Subdivision"), which may consist of attached and detached single-family and multi-family residential dwelling units, buffers, open space, recreational facilities, and other uses consistent with the zoning of the Properties and the Town of Cary approvals for Highcroft P.U.D.;

AND WHEREAS, Declarant desires, among other things, to provide for the maintenance and upkeep of certain common areas within the Subdivision, to provide for enforcement of covenants and restrictions applicable to the Subdivision, to protect the value and desirability of the Properties, and to provide for maintenance of storm water drainage systems and facilities within the Subdivision, and, to that end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and each owner of any part or all thereof;

WHEREAS, in furtherance of the foregoing, Declarant also desires to incorporate under the nonprofit corporation laws of the State of North Carolina the **HIGHCROFT COMMUNITY ASSOCIATION, INC.**, to own, maintain and administer common areas, to administer and enforce covenants and restrictions applicable to the Subdivision, and to collect and disburse the assessments and charges provided for herein;

NOW, THEREFORE, Declarant hereby declares that the real property described in **Exhibit A**, together with such Additional Property as may be subjected to the Declaration from time to time pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration, all of which shall run with such real property and, as provided herein, be binding on and inure to the benefit of all owners of any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns.

**ARTICLE I
DEFINITIONS**

The following words and terms, when used in the Declaration or any amendment hereto, or any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows (when these and other defined words or terms herein have an initial capital letter or letters, it is not required that their use in the Declaration have initial capital letters in order to have the defined meaning). Terms and words used herein without definition shall have the meanings, if any, specified therefor in the "Definitions" section of the Act or, if not defined in the Act, in the "Definitions" section of the Nonprofit Corporation Act, or if not defined in either

the Act or Nonprofit Corporation Act, any applicable definitions section of the Code, and, in the event of any conflict between the definitions contained herein and the definitions contained in the Act, the Nonprofit Corporation Act or the Code, the Act or Nonprofit Corporation Act or Code, as appropriate, shall control:

(a) "Act" is defined as the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof as enacted from time to time.

(b) "Apartment Unit" is defined as a Dwelling Unit in a building within the Properties that contains one or more other Apartment Units, and which Apartment Units have been approved as Apartment Units by Approved Plans and are occupied or intended for occupancy by tenants or sub-tenants of the Owner of the building in which such Apartment Units are located. Provided, however, the foregoing definition shall not preclude the Owner of the building in which the Apartment Units are located from living in one of the Apartment Units. Typically, when a portion of the Properties is developed into Apartment Units, it will consist of multiple buildings, each containing one or more Apartment Units.

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

(d) "Association" is defined as the **HIGHCROFT COMMUNITY ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

(e) "Board" is defined as the Board of Directors of the Association, and is the "Executive board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for herein and in the Act.

(f) "Builder" is defined as a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale (or, in the case of Apartment Units, for lease) to other Persons, and who purchases or becomes the Owner of one or more Lots or Development Parcels within the Community for the purpose of constructing thereon one or more Dwellings for resale (or, in the case of Apartment Units, for lease) to other Persons. "Builders" shall mean and refer to all such persons or entities.

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

(h) "City" or "Town" is defined as the Town of Cary, North Carolina (also referred to herein as the "Town of Cary"), the County of Wake, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties, whichever governmental entity or entities is/are applicable.

(i) "Code" or "Cary Town Code" is defined as the Town of Cary ordinances, as the same currently exist, and including all rules and regulations adopted pursuant thereto, and including all amendments, supplements and replacements thereof as enacted from time to time.

(j) "Common Expenses" is defined as: (i) expenses of maintenance of Common Property, including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) expenses of maintenance of Landscaped Rights-of-Way; (iii) *ad valorem* taxes and public assessments, if any, levied against the Common Property or other assets of the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional *ad valorem* taxes on such real property that would not be assessed in the absence of such improvements); (iv) premiums for hazard, liability and other insurance insuring the Common Property or Association, its officers, directors and employees, if any; (v) fees and expenses of attorneys, accountants, and other persons and entities employed by the Association for Association business; (vi) expenses declared to be or described as Common Expenses by the provisions of the Declaration; (vii) expenses determined by the Board or by the Members to be Common Expenses; and (viii) all other expenses incurred by the Association in performing its functions and providing services under the Governing Documents and Legal Requirements, including operating, management and administrative expenses.

(k) "Common Property" and "Common Area" (the terms being used interchangeably herein) are defined as (i) all real property and improvements thereon owned in fee by the Association for the common use, enjoyment or benefit of the Members of the Association or the Properties, and (ii) all rights and easements of the Association in, on, under and to any real property not owned in fee by the Association, together with all improvements on such real property that are owned or maintained by the Association, each such easement or right also being referred to herein as a "Common Property Easement". Common Property and Common Property Easement typically will be identified either by plat recorded in the Wake County Registry and labeled thereon as "Common Area", "Common Property", "Open Space", "Private Open Space", "Landscape Easement", "Sign Easement", "Street Island", "Buffer" or some other similarly descriptive term, or by an instrument conveying real property or an easement or right therein to the Association (typically, an instrument granted to or reserved by or on behalf of the Association or by or on behalf of the Declarant for later transfer or assignment to the Association, for the use, enjoyment or benefit of the Members of the Association or the Properties). This definition of Common Property also includes Limited Common Property, which is a sub-classification of Common Property and is for the use, enjoyment and benefit of less than all of the Members of the Association or the Properties. All Common Property shall be maintained by the Association as provided herein. (Note: The definition of Common Property in the Declaration is broader than the definition of "common elements" in the Act.)

Common Property also includes all other property and improvements, if any, required to be included as such by the Code, except that all real property, private streets and private utility lines owned by, or under the jurisdiction of, a Sub-Association are Sub-Association Common Property as defined herein and are not the Common Property of the Association.

(l) "Condominium" is defined as any portion of the Properties on which a condominium has been created pursuant to the North Carolina Condominium Act (Chapter 47C of the North Carolina General Statutes, as amended from time to time).

(m) "Condominium Unit" is defined as a physical portion of a Condominium designated for separate ownership or occupancy. See N.C.G.S. § 47C-1-103(25).

(n) "Declarant" is defined as **IMPACT PROPERTIES GROUP, LLC**, a North Carolina limited liability company. The term "Declarant" also includes any Person to whom or which Declarant assigns or delegates the rights and/or obligations of Declarant under the Declaration by an assignment of Declarant's rights recorded in the Wake County Registry. The term "Declarant" also includes any Person designated by Declarant as its "affiliate". For this purpose, an affiliate is a Person, other than a Builder or Owner of a constructed Dwelling, owned or controlled by Declarant or by any one or more of the members, shareholders or other owners of Declarant.

(o) "Declarant Control Period" is defined as the period of time between the date of recording of the Declaration and ending on the date on which the first of the following occurs:

- (1) the later of 5:00 p.m. on: (i) the date that is ten (10) years after the date on which the Declaration is recorded, or (ii) the date that is five (5) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to the Declaration. Notwithstanding the foregoing, if Declarant is delayed in the development of the Community as a result of a sanitary sewer, water or building permit moratorium, or as the result of some other cause or event beyond Declarant's control, then the applicable time period shall be extended by the amount of time of the delay, up to a maximum total extension time of three (3) years; or
- (2) the date on which the total number of votes entitled to be cast by the Class A Members other than Builders equals the total number of votes entitled to be cast by the Class B Member and the Builders. Provided, until such time as the Declarant Control Period ends under any other subparagraph of this definition, the Class B membership shall be reinstated automatically from time to time as Declarant acquires sufficient additional votes annexation of additional real property to the Declaration or otherwise such that the total number of votes entitled to be cast by Declarant and the Builders exceeds the total number of votes entitled to be cast by the Class A members other than Builders; or
- (3) voluntary termination of the Class B membership by a written instrument executed by Declarant and recorded in the Registry; or
- (4) termination required by any Legal Requirement.

(p) "Declaration" is defined as this "Declaration For Highcroft P.U.D.", and including all duly adopted amendments hereto.

(q) "Development Parcel" is defined as any portion of the Properties that is owned by a Person other than the Declarant and is not a Lot or Exempt Property. The Owner of a Development Parcel, within fifteen (15) days after recording any plat of any portion of a Development Parcel that subdivides it into Lots or otherwise, shall provide a copy of such recorded plat (including plats and plans related to the establishment of a Condominium) to the Association and, during the Development Period, to the Declarant. Typically, when a Development Parcel is improved without being subdivided into Lots on which detached or attached Dwellings are to be constructed, it will consist of a Condominium or contain buildings in which Apartment Units are located.

(r) "Development Period" is defined as the period of time from the date of recording of the Declaration in the Registry through and including the later of the last day on which Declarant owns any portion of the Properties, or the date of release of the last bond (or letter of credit or other, similar financial guarantee) posted by Declarant with the City in connection with Declarant's development of the Properties. Further provided, with respect to appointment of the Architectural Review Committee and architectural approvals for Improvements required to be approved by the Architectural Review Committee as provided herein, the Development Period shall continue until all initial construction of Dwellings has been completed on all Parcels.

(s) "Dwelling" or "Dwelling Unit" is defined as any building or portion thereof (including accessory structures such as a garage) within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and which contains facilities for cooking, sleeping and toilet that are not shared by the occupants of any other Dwelling (a utility apartment as defined herein is part of, and not separate from, the Dwelling Unit in which it is located). A "single-family dwelling" contains one Dwelling Unit on its own Lot, and may be in its own building or may be one of two or more Dwelling Units in a building (for example, two or more townhomes located in the same building, but each townhome being located on its own separate Lot under Legal Requirements. A "multi-family dwelling" is one of two or more Dwellings located on the same Lot under Legal Requirements, whether an Apartment Unit, Condominium Unit, duplex unit or other type of multi-family dwelling. A single-family dwelling and a multi-family dwelling each is deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

(t) "Exempt Property" is defined as all portions of the Properties included within any of the following categories:

- (1) Common Property;
- (2) Sub-Association Common Property;
- (3) property owned by, or dedicated to and accepted by, the City or a utility, including property within the right-of-way of publicly-dedicated streets and roads;
- (4) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, unless it contains a building used as a Dwelling.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the City or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, is exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the City or any other Person.

Exempt Property that loses its status as Exempt (e.g., property within a publicly-dedicated street right-of-way that has been closed as a public street, property formerly owned by the City or a tax-exempt charitable or nonprofit organization which has been conveyed to a Person whose status does not qualify for the exemption) shall be reclassified as a Lot, Development Parcel, Unsubdivided Land or Common Property, as appropriate, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots, Development Parcels, Unsubdivided Land and Common Property.

(u) "Governing Documents" is defined as the Declaration, the Articles of Incorporation, the Bylaws, and all applicable Supplemental Declarations and Subdivision Declarations.

(v) "Improvement" is defined as any improvement of or on any Parcel, including Dwellings and other structures (specifically including exterior materials, colors, size, location and architectural style of same), decks, patios, porches, driveways, motor vehicle and other parking areas, storage areas located outside of a Dwelling, recreational areas, equipment and facilities located outside of a Dwelling, mailboxes, exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals, fences, walls, landscaping (including planted areas, grassed areas, and natural areas), poles, flags, decorative features and items on the exterior of a Dwelling or in the yard, ponds, lakes, clearing, grading and other site preparation, swimming pools, exterior lights, signs located outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Properties, and all other exterior improvements. The definition of Improvements includes both initial improvements and all subsequent alterations, changes and additions to same. The term "initial improvements" is defined as all of the improvements constructed or placed on any Lot in accordance with Approved Plans at the time of issuance of a certificate of occupancy for the Dwellings or buildings thereon.

(w) "include" or "including" is defined as being inclusive of, but not limited to, the particular example(s) described, unless otherwise clearly obvious from the context.

(x) "Institutional Lender" is defined as a Mortgagee who is a commercial bank, savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund or business trust, including real estate investment trust, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities and who holds a first lien deed of trust encumbering a Lot ("first lien" meaning that it has priority over all other security interests in the Lot given by the Owner thereof). Only for the purposes of the notice and inspection rights contained in the Declaration in the portions hereof dealing specifically with Institutional Lenders, amendment of the Declaration and termination of the Declaration, the term "Institutional Lender" also shall include the Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the Department of Veterans Affairs ("VA"), the Government National Mortgage Association ("GNMA") and any other public or private secondary mortgage market agency participating in purchasing, guaranteeing or insuring mortgages which has notified the Board of such participation in writing (each of whom generically is referred to herein as a "Secondary Mortgage Market Agency"). Where the approval of Institutional Lenders is required, such approval consists of any one or more of the following: (i) written approval; (ii) any written waiver of approval rights; (iii) a letter stating no objection; or (iv) presumptive approval if an Institutional Lender does not respond to a notice from the Association requesting approval by notifying the Association, in the manner required herein for giving notices, within thirty (30) days after the Association gives notice to the Institutional Lender of the request for approval.

(y) "Landscaped Right-of-Way" is defined as a public or private street right of way in or contiguous to the Properties, and/or medians and other areas within or adjoining such public or private street right of way, including improvements therein (for example, landscaping, grass and signs), which are designated as Landscaped Rights-of-Way by the Declarant, during the Development Period, and thereafter, by the Board.

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

(aa) "Limited Common Expenses" is defined as all expenses of the type included within the term Common Expenses, but that are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments against Members who own, or who own property within, the particular phase, section or Parcel for or on which the associated Limited Common Property has been established.

(bb) "Limited Common Property" and "Limited Common Area" (the terms being used interchangeably herein) are defined as Common Property that is established by the Declarant or the Association for the benefit of a particular phase, section, subdivision, or Parcel within the Community and which has been designated as such by the Declarant or the Association. Limited Common Property is separate and distinct from Sub-Association Common Property. Limited Common Property may include, for example, landscaped medians in streets and private alleys behind Dwellings in particular sections of the Community.

(cc) "Lot" is defined as any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as physically existing thereon (for example, an Apartment Unit), that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot on which a single-family dwelling is to be constructed becomes a Lot upon the recording of a plat thereof. With respect to a Condominium Unit, it becomes a Lot when the Condominium plat and plans are recorded. With respect to an Apartment Unit, it becomes a Lot when it becomes a Dwelling as defined herein. This definition of Lot does not include a Development Parcel or Unsubdivided Land, and is narrower in scope than the definition of Lot in the Act. The definition of "Parcel" as used herein is the same as the definition of Lot used in the Act with respect to Section 47F-3-101 of the Act relating to membership in the Association. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly platted lot thereafter shall constitute a Lot under this definition.

(dd) "maintain", "maintaining", "maintenance" or any substantially similar term used in the Declaration, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(ee) "Master Plan" is defined as the most current version of the drawing approved by the Declarant that depicts the conceptual plan for development of the Properties. If there is any conflict between the Master Plan and a Subdivision Plan, the Subdivision Plan shall control.

(ff) "Member" is defined as each Person who or which holds membership in the Association.

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

(hh) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust.

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

(jj) "Owner" is defined as the owner of record, whether one or more Persons, of fee simple title to any Parcel of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest as a result of a contract to purchase, option to purchase, or as security for the performance of an obligation.

(kk) "Parcel", as that term is used herein, includes and refers to any tract of Unsubdivided Land, any Development Parcel, and any Lot. The definition of "Parcel" as used herein is the same as the definition of Lot used in the Act with respect to Section 47F-3-101 of the Act relating to membership in the Association.

(ll) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.

(mm) "Plans" is defined as the plans and specifications for a proposed Improvement showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the applicable portion of the Properties, driveway, parking areas, provisions for storm water drainage, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified from time to time in any applicable architectural guidelines. "Approved Plans" is defined as Plans that have been approved by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(nn) "Properties" is defined as the Existing Property, together with all Additional Property annexed to the Declaration pursuant to Article II hereof, less and except all real property that is withdrawn from the Declaration as allowed herein.

(oo) "Recreational Amenities" is defined as those portions of the Common Property on which a swimming pool, clubhouse, bathhouse, tennis courts, volleyball courts, tot lots, trails, parks and/or other recreational facilities, including associated parking and other improvements, have been constructed or placed for use, as provided herein, by the Declarant, by Class A Members and their family members, tenants and guests as provided herein, and by Recreational Users. Provided, however, nothing herein shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

(pp) "Recreational User" is defined as each natural Person, other than Declarant or a Class A Member (and such Class A Member's family members, tenants and guest) who, subject to rules, regulations and fees adopted by the Board, has been granted the right to use the Recreational Amenities. A Recreational User shall have no voting

rights in the Association, but a Recreational User shall be subject to payment of such charges for use of the Recreational Amenities as established by the Board and to all of the rules and regulations for use of the Recreational Amenities applicable to Owners, as well as any additional rules and regulations adopted from time to time by the Association.

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

(rr) "Sub-Association" is defined as an entity organized for the purpose of owning, managing and/or maintaining that Sub-Association's Common Property (including the common elements in a Condominium), including a property owners association in a townhome development or Condominium. Assessments imposed upon the Members of the Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Properties thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by the Declaration. If there is any conflict between the provisions of the Declaration and the provisions of any applicable documents establishing or governing a Sub-Association, the provisions of the Declaration shall control.

(ss) "Sub-Association Common Property" and "Sub-Association Common Area" (those terms being used interchangeably herein) are defined as portions of the Properties owned or maintained by a Sub-Association for the use, enjoyment and/or benefits of its members. All private streets and open space owned by, or under the jurisdiction of, a Sub-Association are Sub-Association Common Property. "Sub-Association Limited Common Property" and "Sub-Association Limited Common Area" are defined as Sub-Association Common Property that is established for the benefit of a particular phase, section, subdivision, or portion of that portion of the Properties subject to the jurisdiction of the Sub-Association.

(tt) "Subdivision Plan" is defined as the most current development plan approved by the City for the applicable portion of the Properties.

(uu) "Unsubdivided Land" is defined as all portions of the Properties owned by the Declarant and which are not Lots or Exempt Property, and on which no Dwellings are located. After the end of the Declarant Control Period, all Unsubdivided Land shall be treated in the same manner as Development Parcels for purposes of assessments and voting under the Declaration. Unsubdivided Land on which Dwellings are located shall be treated under the Declaration in the same manner as Lots or Development Parcels, whichever is applicable, for purposes of assessments and voting in the Association.

(vv) "utility" or "public utility" (the terms being used interchangeably herein) are defined as any one or more of the following used in any part or all of the Properties: electricity; telephone; Internet service; water; sanitary sewer; natural gas; television; and any other service or facility generally recognized as a public utility or determined to be a public utility by the Declarant (during the Development Period, and thereafter, by the Board); "utility provider" or "public utility provider" (the terms being used interchangeably herein) is defined as the Person who provides a utility to any part or all of the Properties.

(ww) "utility apartment" is defined as a portion of a Dwelling Unit that complies with all of the following requirements: (i) it physically is part of the Dwelling Unit or part of a garage attached to or detached from the

Dwelling Unit; (ii) it is occupied by a Person or family unit other than the Person or family unit that occupies the Dwelling Unit in which it is located; (iii) the utility apartment contains a floor area not in excess of 1/4 of the gross floor area of the Dwelling Unit, exclusive of the utility apartment (for example, if the Dwelling Unit contains 2,000 square feet, the utility apartment may contain a maximum of 500 square feet); and (iv) the utility apartment complies with all Legal Requirements.

ARTICLE II THE PROPERTIES; ANNEXATION; WITHDRAWAL; SUBDIVISION DECLARATION

Section 1. Existing Property. The Existing Property which is and shall be held, transferred, sold, conveyed, used and occupied subject to the Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto, and constitutes the Properties at the time of the recording of the Declaration.

Section 2. Annexation of Additional Property.

(a) Annexation by the Declarant. At any time before the end of the Declarant Control Period, any part or all of the real property described in **Exhibit B** to the Declaration (hereinafter the "Exhibit B Property") may be annexed to the Declaration by the Declarant without the consent of the Members by the recording of a plat showing the portion of the Exhibit B Property to be annexed and of a "Supplemental Declaration" extending the operation and effect of the Declaration thereto (all of the Exhibit B Property annexed to this Declaration is referred to herein as "Additional Property"). Any or all of the Exhibit B Property may be annexed and subjected to the Declaration as one parcel or as several parcels at different times. Nothing here shall be deemed to require the Declarant to annex any part or all of the Exhibit B Property.

(b) Other Annexation. If the Declarant desires to annex real property to the Declaration that is not of a type described in the immediately preceding subsection, or if the Declarant desires to annex real property to the Declaration after the end of the Declarant Control Period, or if a Person other than the Declarant desires at any time to annex real property to the Declaration, such real property may be annexed to the Declaration only by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association (and, during the Declarant Control Period, including a majority of the votes cast at such duly called meeting of the Association by the Members other than the Declarant), and the recording in the Registry of a Supplemental Declaration signed by the owner of such real property, the appropriate officers of the Association certifying the required meeting and vote, and during the Declarant Control Period by the Declarant, whichever is applicable (all of such real property annexed to this Declaration also is referred to herein as "Additional Property").

(c) Conditions of Annexation. Any real property to be annexed to the Declaration must be contiguous to some portion of the Properties already subject to the Declaration (the term "contiguous" as used in the Declaration includes any such real property that is separated from any portion of the Properties only by a public or private street right of way, or an easement, or any property owned by the City and, for the purposes of annexation of real property to the Declaration, also consists of any property that adjoins any boundary of the 22.29 acres, more or less, identified

as "Wake County Board Of Education" on the plat recorded in the Wake County, North Carolina Registry in Book of Maps 2003, Page 685). All annexations of real property to the Declaration must be approved (i) by the Town of Cary, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval.

(d) Supplemental Declaration. Each Supplemental Declaration shall be effective to annex real property to the Declaration only upon obtaining all approvals required by the Declaration and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Supplemental Declaration shall describe the real property annexed and shall reference the Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, it may be contained in a deed from the Declarant conveying the real property being annexed), but it shall clearly indicate the intention to subject such real property to the Declaration. Any Supplemental Declaration may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person annexing such real property to the Declaration may determine, which provisions may be more, but not less, restrictive than the provisions of the Declaration. Except for such more restrictive provisions, the Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with the Declaration.

(e) Class B Votes Attributable to Annexed Property. The annexation of Exhibit B Property or other real property owned by Declarant shall result in the addition of the following Class B Member votes in the Association: (i) if there is a Master Plan for the annexed property approved by the Town of Cary, the additional number of Class B votes attributable thereto shall be equal to the total number of residential units approved for such annexed property multiplied by three; (ii) provided, however, when there is a Subdivision Plan for any part or all of such annexed property, and the total number of residential units approved under the Subdivision Plan is different from the total number of residential units approved for such portion of the annexed property under the Master Plan, the number of Class B votes for the applicable portion of the annexed property shall be adjusted in accordance with the number of residential units in the Subdivision Plan (the Class B votes being the number of such residential units multiplied by three). Until such time as there is a Master Plan or Subdivision Plan approved for the annexed property, there shall be no Class B votes for such annexed property. For the purposes of this subsection, the term "residential units" includes proposed Lots. For the purposes of this subsection, the term "residential units" includes proposed Lots for single-family dwellings and multi-family dwellings.

(f) Conveyance of Common Property in Annexed Property. Common Property, if any, located within the newly annexed property or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV of the Declaration.

Section 3. Order of Development and Annexation. It is the Declarant's intent to develop the Properties it owns in accordance with the Master Plan, as modified from time to time. Provided, however, but subject to Legal Requirements, the Master Plan shall not obligate the Declarant to develop any particular portion of the Properties now or in the future, the Declarant shall not be required to follow any particular sequence or order of development of the Properties, and the Declarant may annex or consent to annex additional real property to the Declaration before completing development of all of the Properties previously subjected to the Declaration.

Section 4. Withdrawal of Properties from the Declaration.

(a) At any time and from time to time during the Development Period the Declarant, in its sole discretion, without the approval or joinder of the Association or any Owner or other person or entity except the Owner of the portion of the Properties being withdrawn and the Town of Cary (if required) may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from the Declaration, provided each portion of the Properties to be withdrawn either is: (i) dedicated or to be dedicated to public use; or (ii) conveyed or to be conveyed to the City; or (iii) zoned, used or intended for use for commercial or other non-residential purposes; or (iv) conveyed or to be conveyed to an owner of real property that adjoins a portion of the Properties and is being conveyed to such owner to settle an existing or potential dispute with that owner or an objection of such owner to a development plan for any part or all of the Properties, or is in satisfaction of a Legal Requirement; or (v) to correct or modify the description of the real property "saved and excepted" from the Existing Property as described on **Exhibit A**; or (vi) to withdraw from the Declaration any portion of the Properties that is owned by the Declarant and is not a Lot at the time of withdrawal. All portions of the Properties withdrawn from the Declaration shall be identified either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date specified therein. All such withdrawals of portions of the Properties from the Declaration must be approved (i) by the Town of Cary, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval.

(b) After the end of the Development Period, at any time and from time to time one or more portions of the Properties may be withdrawn from the Declaration, provided such portion of the Properties to be withdrawn either is: (i) dedicated or to be dedicated to public use; or (ii) conveyed or to be conveyed to the City; or (iii) zoned, used or intended for use for commercial or other non-residential purposes; or (iv) conveyed or to be conveyed to an owner of real property that adjoins a portion of the Properties and is being conveyed to such owner to settle an existing or potential dispute with that owner or an objection of such owner to a development plan for any part or all of the Properties, or is in satisfaction of a Legal Requirement, and the withdrawal has been approved by the Owner of such portion of the Properties and by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly-called meeting of the Members for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties. All such withdrawals of portions of the Properties from the Declaration must be approved (i) by the Town of Cary, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval.

Following approval of any such withdrawal, the Association and the Owner of the portion of the Properties to be withdrawn from the Declaration shall record a withdrawal declaration particularly describing the withdrawn portions of the Properties by reference to a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date specified therein.

Section 5. Effect of Annexation or Withdrawal. Other than as specifically limited by the Governing Documents or any Legal Requirement, the Declarant shall have full power to add to, subtract from, or make changes in, the Master Plan or any Subdivision Plan, and annex real property to and withdraw real property from the Declaration, regardless of the fact that such actions may affect the relative voting strength of any class of

membership in the Association or reduce the number of Owners subject to assessment under the Declaration. All portions of the Exhibit B Property not annexed to the Declaration may be owned, sold, transferred, mortgaged, leased and developed in any manner allowed under Legal Requirements, without regard to the provisions of the Declaration. Any portion of the Properties that is withdrawn from the Declaration may be owned, sold, transferred, mortgaged, leased and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Declaration, except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats recorded in the Registry or as described in documents recorded in the Registry, shall remain in force and effect.

Section 6. Subdivision Declaration. Declarant contemplates that within the Properties there could be two or more separate and distinct residential phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Parcel sizes, types of Dwelling Units, marketing considerations and other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Subdivision Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Subdivision Declarations as the Declarant or other Person, in his, her or its sole discretion, may from time to time determine. Provided, however, during the Development Period no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Subdivision Declaration unless the Declarant consents in writing thereto. More than one phase, section or subdivision may be subjected to the same Subdivision Declaration. Any Subdivision Declaration may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Subdivision Declaration may determine, which provisions may be more, but not less, restrictive than the provisions of the Declaration. Except for such more restrictive provisions, the Declaration shall control over any provision of any Subdivision Declaration that conflicts or is inconsistent with the Declaration.

ARTICLE III ASSOCIATION

Section 1. Board Acts for Association. All obligations required or allowed to be performed by the Association shall be performed in accordance with Legal Requirements and applicable provisions of the Governing Documents. Unless reserved by or for the Declarant in the Declaration, other Governing Documents or Legal Requirements, or unless otherwise required by Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed or directed by the Board on behalf of the Association.

Section 2. Minimum List of Functions and Services. The following are the "Minimum List of Functions and Services" which the Association shall do, provide, perform, accept, or be responsible for, as the case may be, the expenses for which are Common Expenses. Maintenance of Common Property, Common Property Easements, Landscaped Rights-of-Way and other property or thing to be maintained shall be in such manner and to such extent as reasonably determined from time to time by the Board, giving due consideration to the level of

maintenance that also may be provided by the City or any other Person. All obligations required or allowed to be performed by the Association shall be performed in accordance with Legal Requirements and applicable provisions of the Governing Documents:

(a) The Association shall carry out the Association's obligations and business under the terms of the Governing Documents, including legal, financial, accounting and communications services, and shall provide or procure the administrative services necessary in connection therewith.

(b) The Association shall maintain the Common Property. Provided, however, with respect to Common Property Easements, the Association's maintenance responsibility is only what is reasonably required in connection with the Association's use thereof (for example, mowing of grass in a storm water drainage easement on a Lot or in a general utility easement around the boundaries of a Lot typically would be the responsibility of the Owner of the Lot, unless the Association determines it is in the best interest of the Association to provide such maintenance).

(c) The Association shall maintain Landscaped Rights-of-Way, and the Association shall have the power and authority to enter into such encroachment agreements and other agreements with the City as are reasonably necessary to enable the Association to maintain such Landscaped Rights-of-Way.

(d) The Association shall accept transfer of ownership from Declarant of any and all Common Property and/or rights therein.

(e) The Association shall accept from Declarant any and all assignments of Declarant rights under the Declaration or any Subdivision Declaration or Supplemental Declaration, including assumption of all obligations which are incident to such assignments as they relate to any Common Property, Landscaped Right-of-Way, architectural approvals or other functions or services performed or provided by the Association.

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

(g) The Association shall operate the Architectural Review Committee(s) as and when provided in the Declaration.

(h) The Association shall keep records of all its acts and corporate business, and, in particular, the Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act.

(i) The Association shall provide an annual financial report to each Member making written request therefor and paying the reasonable charge for same established from time to time by the Board and, upon either the (i) the affirmative vote of majority of the votes cast by the Members present at a duly called meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of the total votes of all the Members of the Association, shall have such report audited (at the expense of the Association) by an independent

certified public accountant, which audited report shall be made available to each Member making written request therefor.

(j) The Association shall make available for inspection by the Members and Mortgagees, upon reasonable request, during normal business hours and upon payment of reasonable copying and administrative costs, current copies of the Governing Documents, the rules and regulations of the Association, and the books, records and financial statements of the Association.

(k) As required by the Governing Documents and Legal Requirements, the Association shall establish a proposed annual operating budget, shall establish the amount of and collect assessments, and shall establish reserve funds.

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

(m) The Association shall pay all applicable *ad valorem* property taxes and City assessments, if any, on the Common Property owned by the Association and on other assets owned by the Association.

(n) The Association shall obtain and maintain insurance and fidelity bonds as required in the Declaration.

(o) The Association shall be responsible for storm water management as provided in the Declaration.

Section 3. Other Functions and Services. The Association is authorized, but not required (except as specified in the immediately preceding Section), to do, provide, perform, accept, or be responsible for any or all of the following, the expenses for which are Common Expenses.

(a) The Association may take all actions its deems necessary to enforce and implement the provisions of the Governing Documents and Legal Requirements, and to perform the functions or services delegated to the Association by the Governing Documents and Legal Requirements, and in connection therewith, except as specifically limited by the Declaration, the Association shall have all of the rights and powers described in Section 47F-3-102 of the Act as it from time to time exists.

(b) The Association may grant easements, leases, licenses and concessions through or over the Common Property, as the Board determines from time to time to be in the best interests of the Association.

(c) Subject to the terms of any encroachment agreement between the Association and the City, the Association may maintain grass, landscaping, decorative paving or other decorative features, and all equipment and facilities associated therewith, within street rights of way and on sidewalks in or adjacent to the Properties, with such frequency and in such manner as determined by the Board. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which the City or any other Person is responsible for and performs such maintenance. The Association may enter into encroachment and other agreements with the City to enable it to perform such maintenance.

(d) To the extent that such services are not, in the opinion of the Board, provided adequately by the City, the Association may provide services of a governmental nature for maintenance of portions of the Properties not owned by the Association.

(e) The Association may make reasonable rules and regulations for the use and operation of the Common Property, and amend them from time to time. Provided, however, any such rule or regulation adopted by the Board may be amended or repealed by the affirmative vote of a majority of the votes cast by the Members present at a duly called meeting of the Association.

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

(g) The Association may borrow funds to pay costs of operation of the Association, which borrowing may be secured by assignment or pledge of Association rights against Owners who are delinquent in payment of assessments or by liens on other Association assets, as determined by the Board, subject to the Governing Documents and Legal Requirements.

(h) The Association may enter into contracts to maintain one or more bank accounts.

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

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

(k) The Association may provide insect and pest control and other services for the Properties to the extent that it is deemed necessary or desirable, in the sole discretion of the Board;.

(l) The Association may employ a manager or firm to manage the business and property of the Association (herein also referred to as a "property manager" or "management company"), and may employ independent contractors or other employees as the Board deems necessary.

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

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

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

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

(q) The Association may impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Parcels and rights of access to easements in Common Property that provide public utility services to Parcels) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer.

(r) After notice and an opportunity to be heard, the Association may impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Parcels and rights of access to easements in Common Property that provide public utility services to Parcels) for reasonable periods for violations of the Declaration or other Governing Documents.

(s) In addition to the insurance coverages required by the Declaration, the Association may obtain and maintain such other insurance coverage as the Board determines to be in the best interests of the Association.

(t) In addition to the foregoing, exercise all powers and rights authorized under the Act, and take all other actions reasonably required for the Association to exercise its rights and perform its obligations under the Governing Documents.

Section 4. Storm Water Management. Except for the maintenance responsibilities placed on Owners by the Declaration, by Legal Requirements, or assumed or undertaken by other Persons (for example, a Sub-Association), the Association, as a Common Expense, shall: (i) maintain all storm water drainage easements (also referred to herein as "storm water easements" or "drainage easements") in the Properties that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Property or benefit or serve more than one (1) Lot; and (ii) maintain the storm water management facilities, if any, on or serving the Properties, which are part of the storm water management system for the Properties as shown on approved Subdivision Plans or other plans approved by the City, or as otherwise required by the City. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of storm water drainage easements and storm water management facilities located on and/or shared with other properties not subject to the Declaration, and may include storm water drainage easements and storm water management facilities that are not located in the Properties. "Storm water management facilities" include ponds, man-made or natural areas and/or planted or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, and also include drains, pipes, dams and other equipment and facilities used for inspecting, collecting, transporting, handling, storing, discharging and managing storm water. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the City, through a department of public works or some other agency or division, elects to maintain, in whole or in part, the storm water drainage easements and storm water management facilities for the Properties, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement with the Association which may require monetary payments to such Person by the Association). Following any such

assumption of maintenance by the City or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the City or other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the storm water management facilities with respect to which the City or such other Person has not assumed maintenance responsibility or following termination of the City's or such Person's maintenance responsibility. The Owner of any Parcel on, over or through which a storm water drainage easement (or portion thereof) is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable; (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or matter has impeded or threatens to impede the free flow of storm water on, over or through the drainage easement or any storm water management facilities located therein. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within a storm water drainage easement or storm water management facility, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within a storm water drainage easement. The Owner of a Parcel on which a storm water drainage easement is located shall not obstruct that easement in any manner. Notwithstanding anything to the contrary herein, each Owner of a Parcel, and not the Association, shall be responsible for maintenance of all storm water easements and storm water drainage equipment and facilities used exclusively in connection with such Parcel or the Improvements thereon, including guttering, and pipes and drains for transportation of storm water from such Parcel into a storm water drainage easement or into a storm water management facility that is part of the storm water management system for the Properties.

Declarant, during the Development Period, and thereafter, the Association, subject to any approval required by the City, may at any time and from time to time grant, relocate, abandon and/or release one or more storm water drainage easements in the Properties, subject to the following: (i) the grant of any such easement also shall be consented to in writing by the Owners of all portions of the Properties on which such easement is located; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the easement then is located or the portions of the Properties served thereby, or it is consented to in writing by the Owners of all portion of the Properties on which such easement is located or which are served thereby; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the storm water management system for the Properties.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds or other financial requirements under Legal Requirements and maintenance agreements executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Development Period, the Declarant on behalf of the Association) may enter into agreements with the City, another association that exists for purposes similar to those of the Association, or any other Person for inspecting, collecting, transporting, handling, storing, discharging, operating and managing any part or all of the storm water from the Properties and/or any or all of the storm water management facilities for the Properties, whether such storm water management facilities are located within or outside of the Properties. Such agreements may require payments from the Association for the services provided by the City, such other association or such other Person in inspecting, collecting, transporting, handling, storing, discharging, operating or managing any part or all of such storm water and/or storm water management facilities. Provided, however, during the Development Period no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different storm water management facilities may be necessary or desirable for different portions of the Properties (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have its own storm water detention areas located within the Properties and it may be desirable for other portions of the Properties to utilize storm water detention areas located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more storm water management facilities in accordance with sound engineering practices and approvals by the City, in fulfilling its obligations under the Declaration the Association (or, during the Development Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different storm water management agreements for different portions of the Properties, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple storm water management facilities and/or agreements are determined to be necessary or desirable, that the costs of maintaining such storm water management facilities and/or funding such agreements may be different for different portions of the Properties. If such is the case, then annual assessments and/or storm water management assessments (as defined herein) may be different for the same type of property (for example, a Lot) in different sections of the Subdivision.

Declarant hereby informs all Owners, Recreational Users and other Persons who may from time to time deal with or come in contact with the Properties, that as storm water drains from the Properties into any of the storm water management facilities for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such storm water management facilities. Accordingly, each Owner, Recreational User and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that at some future time it may be necessary for such substances to be removed from the storm water management facilities or otherwise handled in accordance with Legal Requirements, and for such storm water management facilities to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional storm water management assessment may be required to pay for such removal and/or resultant clean-up of such storm water management facilities.

Declarant, at any time and from time to time, may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements entered into by the Declarant with respect to storm water easements and storm water management facilities for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the agreement being assigned to the Association.

Section 5. Conveyance or Dedication of Common Property. The Association, upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Property (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) of the votes in the Association), and, in addition thereto, only after obtaining (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period the written consent of Declarant, may dedicate portions of the Common Property to public use and/or convey or exchange portions of the

Common Property, for any purpose approved by such Members, including any one or more of the following purposes: (i) to eliminate unintentional encroachments of Improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust boundary lines of portions of the Properties; and (iv) to facilitate the orderly subdivision and development of the Properties as determined by the Board. All such conveyances shall be subject to the following: (i) no such conveyance (either alone, or in conjunction with other conveyances) results in a reduction of the portion of the Common Property that constitutes "open space" required by the City below the minimum amount of "open space", if any, required by the City; (ii) if required by Legal Requirements, the City approves any boundary line adjustment; (iii) the exchanged properties are of like value and utility; (iv) any boundary line adjustment is approved by the Owners of all portions of the Properties affected by the adjustment; (v) each Parcel contiguous to Common Property prior to the conveyance remains contiguous to Common Property after the conveyance, unless otherwise approved by the affected Owner; (vi) the conveyance does not materially conflict with any applicable Subdivision Plan; (vii) no conveyance of Common Property deprives any Parcel of its rights of access and support; and (viii) any conveyance of real property to the Association must be free and clear of all encumbrances except for the Declaration and any applicable Supplemental Declaration, street rights of way or access easements, greenway easements and easements for utilities and storm water drainage.

Any of the foregoing real property acquired by the Association shall be part of the Common Property and, without further act of the Association or its Members, shall be released from all provisions of the Declaration (and any applicable Supplemental Declaration) except those applicable to the Common Property. The portion of the Common Property dedicated, conveyed or exchanged by the Association, without further act of the Association or its Members, shall cease to be Common Property and shall be subject to those provisions of the Declaration (and any applicable Supplemental Declaration) that would have been applicable to such real property had it not been Common Property, except that, if required by the City or a utility provider, such portion of the Common Property may be conveyed by the Association to the City or utility provider, as the case may be, free and clear of all of the terms of the Declaration and any applicable Supplemental Declaration.

In addition to the foregoing requirements, during the Declarant Control Period any conveyance or dedication of Common Property also shall require approval by the FHA or its designee and/or by the VA or its designee (which in connection with any approvals by FHA or VA referenced herein include the United States Department of Housing and Urban Development or its designee) if, at the time of such conveyance or dedication, applicable FHA or VA regulations require such approval.

Section 6. Mortgage and Pledge of Common Property. The Association, upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Property (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) of the votes in the Association), and, in addition thereto, only after obtaining (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period the written consent of Declarant, shall have the power and authority to mortgage the Common Property and to pledge its assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under the Declaration. Declarant may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by the Declarant of the use to which such loan

proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in the Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant under any loan made by it to the Association, without Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

In addition to the foregoing requirements, during the Declarant Control Period any mortgage or pledge of Common Property also shall require approval by the FHA or its designee and/or by the United States Veterans Administration ("VA") or its designee if, at the time of such mortgage or pledge, applicable FHA or VA regulations require such approval.

Section 7. Liability Limitations. Except as required by Legal Requirements or agreed to by any of the following Persons otherwise excluded from liability by the provisions of this sentence, neither Declarant nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any member of the Architectural Review Committee or any other committee appointed by the Board, nor any officer of the Association, nor any shareholder, director, officer, member, manager, agent or employee of Declarant, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association. Neither Declarant nor the Association, nor any of the shareholders, directors, officers, partners, members, managers, agents or employees of same, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's Parcel or Improvements thereon, or for failure to maintain the same (provided, however, and notwithstanding the foregoing, as required herein Declarant shall maintain all portions of the Properties it owns, and, except as otherwise specifically provided herein, directors on the Board and officers of the Association shall have all of the other obligations and liabilities of an Owner under the Declaration with respect to portions of the Properties owned by such Persons). The Association shall indemnify all Association directors and officers, and members of the Architectural Review Committee and other committees of the Board, as required by the Articles and Bylaws.

Neither the Board, the Association, the Declarant, nor any current or former Member of the Association, shall be considered as a bailee of any personal property stored or placed on the Common Property (including vehicles parked on the Common Property), whether or not exclusive possession of the particular area is given to the Person who owns such personal property, nor shall any of the foregoing Persons (other than the Person who owns the personal property) be responsible for the security of such personal property or for any loss or damage thereto. With the exception of liability for gross negligence, the Association shall not be liable for any personal injury or damage to property arising out of or resulting from any of the following: (i) failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense; (ii) weather or other natural events; (iii) the acts or omissions of any Owner or any other Person; or (iv) electricity, water, snow or ice which may leak or flow from or over any portion of the Properties or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Property or from any action taken by the Association to comply with any Legal Requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefitting the Association or any Owner.

Section 8. Merger or Consolidation. Upon a merger or consolidation of the Association with another association in accordance with all Legal Requirements, the properties, rights and obligations of the Association, by operation of law, may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, by operation of law, may be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association under the Declaration and may administer the terms and provisions of the Declaration and any applicable Supplemental Declaration, together with the terms and provisions of any declarations, covenants and restrictions applicable to other property under the jurisdiction of the surviving or consolidated Association, as a common plan. Other than as specifically stated in the plan of merger or consolidation approved pursuant to all Legal Requirements, no merger or consolidation shall effect any revocation of the provisions of the Declaration with respect to the Properties, including the limits on any assessment or any other matter substantially affecting the interests of the members of the Association. During the Declarant Control Period, no merger or consolidation of the Association with another association shall be valid without the written consent of Declarant. In addition to all Legal Requirements, any merger or consolidation of the Association with another association shall be effective and legally valid only upon the affirmative vote by sixty-seven percent (67%) or more of the votes cast by the Class A Members present at a duly called meeting of the Association.

In addition to the foregoing requirements, during the Declarant Control Period any merger or consolidation also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such merger or consolidation, applicable FHA or VA regulations require such approval.

ARTICLE IV RIGHTS IN AND TO COMMON PROPERTY

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by the provisions of this Section 1, or by other provisions of the Declaration or by any Supplemental Declaration or Subdivision Declaration relating to Limited Common Property, or by the rules and regulations adopted by the Members and/or the Board, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Property, which right and easement shall be appurtenant to and shall pass with title to every Parcel, subject to the following:

(a) subject to the provisions of the Code and the Declaration, the right of the Association to charge reasonable admission and other fees for the use of any Recreational Amenities and to limit the use thereof to Owners who occupy a Dwelling on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV, and to Recreational Users.

(b) the right of the Association to regulate or limit use and access by Owners to Common Property Easements to only such use or access as is reasonably necessary to the full use and enjoyment of the portion of the Properties owned by such Owner. In this regard, it is contemplated that there may be some Common Property Easements to which no Owners, or only a limited number of Owners, will have any right of use or access.

(c) subject to any applicable notice and hearing requirements of the Act, the right of the Association to fine an Owner and/or suspend the rights (voting and other) and easements of enjoyment in and to the Common Property of an Owner and such Owner's family members, lessees or guests, for any period during which any assessment or other amount owed by the Owner to the Association remains unpaid, and for a reasonable period of time for any violation or infraction of the Governing Documents, the Act or the Association's published rules and regulations by an Owner or such Owner's family members, lessees or guests. Provided, however, no such suspension shall constitute a waiver or discharge of the Owner's obligation to pay any assessment or other charge under the Declaration. Further provided, the Association shall not suspend the right of any Owner to use any portion of the Common Property over which there is an easement that provides access for ingress and egress from a public street to such Owner's Parcel, or over which a sanitary sewer, water or other utility easement is located that provides such utility services to such Owner's Parcel, but such Owner shall remain subject to the rules and regulations, if any, established by the Association for use of such portion of the Common Property.

(d) the right of the Association to dedicate, sell, transfer or exchange all or any part of the Common Property, subject to the applicable voting requirements for such actions.

(e) the right of the Declarant, during the Development Period, and the right of the Association, to grant easements over and across the Common Property to any public agency, authority or utility for the installation and maintenance therein of water and sanitary sewer, natural gas, telephone, cable television and other utilities, and storm water drainage facilities when, in the opinion of the Declarant or Board, as applicable, such easements are necessary for the convenient use and enjoyment of the Properties or any part thereof.

(f) the right of the Association to borrow money and, subject to the applicable voting requirements for such actions, to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Property or its other assets as security for such indebtedness. Provided, however, that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as provided in the Declaration.

(g) the right of the Association, as provided by and consistent with the provisions of the Code, the Act and the Declaration, to exchange all or part of the Common Property for other property and consideration.

(h) the right of the Association temporarily to close or limit the use of Common Property for maintenance or installation of improvements thereon.

(i) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Property.

(j) the rights of the Declarant reserved in the Declaration.

Section 2. Delegation of Use.

(a) Family. Subject to all provisions of the Declaration and rules of the Association for use of the Common Property applicable to Owners, the right and easement of enjoyment and access in and to the Common Property

granted to every Owner may be exercised by members of the Owner's family who occupy the Dwelling of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. Subject to all provisions of the Declaration and rules of the Association for use of the Common Property applicable to Owners, the right and easement of enjoyment and access in and to the Common Property granted to every Owner may be delegated by such Owner to the Owner's tenants or contract purchasers who occupy the Owner's Dwelling or a portion thereof within the Properties leased by the tenant or subject to the contract to purchase from such Owner, as such Person's principal residence in Wake County, North Carolina. One intent of this provision is to make it clear that an Owner of Apartment Units in the Subdivision, if any, may delegate such rights of easement and enjoyment to the occupants of such Apartment Unit, as the Owner is obligated to pay assessments with respect to such Apartment Units under the Declaration. Provided, such rights may not be delegated by an Owner to the tenants or occupants of any utility apartment who are not either a child or parent of the Owner of the Dwelling in which the utility apartment is located. Those tenants or occupants of a utility apartment may have such rights and easements of enjoyment of the Common Property only as Recreational Users and upon payment of all applicable fees and charges required of Recreational Users.

(c) Guests. The right and easement of enjoyment and access in and to the Common Property granted to every Owner by this Article may be exercised from time to time by the authorized guests of such Owners, subject to all rules of the Association for use of the Common Property by such guests.

(d) Suspension of Rights. The rights of any Person under this Section who is authorized to exercise, or to whom an Owner has delegated or authorized the use of, any right and easement of enjoyment and access in and to the Common Property, shall be suspended by, upon and during suspension of such Owner's rights.

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that it will endeavor to convey title to the Common Property within each phase or section of the Community to the Association prior to the conveyance of the first Lot or Dwelling Unit within such phase or section to an Owner other than a Builder. Provided, however, specific performance shall be the only remedy available for any failure of Declarant to do so, and the Association shall accept conveyance of such Common Property from the Declarant at any time. Declarant reserves an easement over and across the Common Property so long as it owns any Parcel within the Properties for the purpose of constructing any improvements on the Common Property as it deems necessary or advisable, provided that any such improvements must comply with Legal Requirements. Except as otherwise stated herein, all conveyances by Declarant to the Association may be by special warranty deed and shall be free and clear of all encumbrances and liens, except for all Legal Requirements, applicable rights of way and easements in instruments or plats recorded in the Registry, and the Declaration and other restrictions that were imposed prior to the time Declarant acquired title to such Common Property. Any permanent improvements constructed or placed on the Common Property by Declarant shall become the property of the Association upon the later of conveyance of such Common Property to the Association or completion of such improvements.

Section 4. Rights and Responsibilities as to Common Property Easements.

(a) Owners. Each Owner of a Parcel upon which a Common Property Easement lies shall pay all *ad valorem* property taxes and assessments levied against such Parcel, including that portion of such tax or assessment

as is attributable to such Common Property Easement, and shall maintain the portion of such Owner's Parcel subject to the Common Property Easement in the same manner as the Owner is required to maintain the remainder of the Parcel under the Declaration, except that the Association shall maintain those improvements in the Common Property Easement constructed or installed by or on behalf of the Association for use in connection with the Common Property Easement, and the Association shall reimburse the Owner for any additional *ad valorem* property taxes assessed against the Parcel specifically for the improvements associated with the Common Property Easement. Notwithstanding any other provision of the Declaration, no Owner or other Person shall, without the prior written consent of the Association (or, during the Development Period, the prior written consent of the Declarant): (i) remove any trees or other vegetation or improvements located within a Common Property Easement; (ii) maintain gates, fences, or other improvements in or on a Common Property Easement; (iii) place any garbage receptacles in or on a Common Property Easement; (iv) fill or excavate a Common Property Easement or any part thereof; or (v) plant trees or other vegetation in, or otherwise restrict or interfere with, the maintenance of a Common Property Easement.

(b) Declarant and Association. The Declarant and Association, and their respective employees, agents, contractors and subcontractors, have a nonexclusive right and easement at all times to enter upon any portion of a Parcel reserved or designated as a Common Property Easement for the purposes of: (i) maintaining entrance signs, monuments and decorative features, and other signs, all of which shall have been approved by the City if such approval is required under Legal Requirements; (ii) maintaining landscaping, storm water drainage facilities, and other improvements to the Common Property Easement as have been approved by the Declarant or Association and, if required, by the City; and (iii) maintaining the Common Property Easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the Common Property Easement free from obstructions and impediments to its use.

Section 5. Leases. Every lease or sublease between an Owner and a lessee for the lease of a portion of the Properties shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and any applicable Subdivision Declaration, and that failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease notwithstanding such omission.

Section 6. Ingress and Egress; Utilities. Notwithstanding anything to the contrary appearing in the Declaration, (i) if ingress and egress from a public street to and from any Parcel is over any part of the Common Property as shown on any plat or described in any instrument recorded in the Registry, or (ii) sanitary sewer, water or other utility services are provided to a Parcel over or through an easement located on the Common Property as shown on any plat or described in any instrument recorded in the Registry, any conveyance or encumbrance of the affected portion of the Common Property shall be subject to those easements for ingress and egress and/or utilities.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each and every Owner of a Parcel, including the Declarant, is a Member of the Association and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Parcel, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Parcel owned by such Owner. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner of a Parcel (except that the Declarant's Class B Membership shall terminate only as provided herein), but such termination shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's ownership, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

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

(a) **Class A.** Class A Members are the Owners of Development Parcels and Lots, excluding the Declarant during the Declarant Control Period. Class A Members are entitled to the following votes:

(1) A Class A Member is entitled to one (1) vote for each Lot owned by the Class A Member; provided, however, only one (1) vote may be cast for each Lot, regardless of the number of Owners thereof.

(2) A Class A Member is entitled to one (1) vote for each acre of a Development Parcel owned by such Class A Member. Provided, however, after a Development Parcel has been fully developed in accordance with the Subdivision Plan, site plan or other development plan therefor approved by the City, or there has been no development or marketing of a Development Parcel for a period of twenty-four (24) consecutive months, no votes as a Development Parcel will be allocated to any remaining undeveloped acreage in that Development Parcel. The determination of the time when such full development has occurred shall be in the reasonable discretion of the Declarant, during the Development Period, and thereafter, in the reasonable discretion of the Association. In determining the number of votes for a Development Parcel, a partial acre equal to 0.5 acre or more shall be rounded up to the nearest whole acre, and a partial acre less than 0.5 acre shall be rounded down to the nearest whole acre, except that where the acreage is less than one (1) acre, the Development Parcel shall be allocated one (1) vote. Only one (1) vote may be cast for each acre of a Development Parcel, regardless of the number of Owners thereof.

When more than one Person owns an interest (other than a leasehold or security interest) in any Lot or Development Parcel, all such Persons shall be Members and the voting rights appurtenant to their Parcel shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(2) **Class B.** The Class B Member is the Declarant. At the time of the recording of the Declaration, the Class B Member is entitled to 861 votes (the maximum number of Dwelling Units allowed in the Properties at the time of the recording of the Declaration under Legal Requirements is 287, and 287 multiplied by 3 is 861). During the Declarant Control Period (including any reinstatement thereof after it has terminated), the number of votes to

which the Class B Member is entitled shall be determined by multiplying by three (3) the maximum number of Dwelling Units then allowed in the Properties under Legal Requirements and then subtracting from that total three (3) votes for each vote entitled to be cast by the Class A Members.

The Class B Membership shall terminate at the end of the Declarant Control Period, subject to reinstatement from time to time as provided in the definition of Declarant Control Period. Upon such termination, the Declarant shall become a Class A Member, shall have Class A votes with respect to the portions of the Properties owned by it, and all Unsubdivided Land shall be treated in the same manner as Development Parcels for purposes of assessments and voting under the Declaration.

Section 3. Apartment Units. At the time of the recording of the Declaration, Declarant does not anticipate that any portion of the Properties will be developed into Apartment Units. However, during the Development Period Declarant reserves the right, by recording a Supplemental Declaration, to create a sub-class of Class A Members for Apartment Units, which sub-class may be allocated one (1) or less vote in the Association for each Apartment Unit, as determined by Declarant in the Supplemental Declaration.

Section 4. Exercise of Voting Rights. The exercise of voting rights shall be governed by the Bylaws of the Association.

ARTICLE VI ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, by execution of the Declaration or by acceptance of a deed or other instrument conveying title to a Parcel, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person which may be designated by the Association to collect such monies on behalf of the Association) all assessments and other charges as required by the Declaration, including the following: (i) annual assessments; (ii) Working Capital Assessment; (iii) storm water management assessment; (iv) special assessments for capital improvements or other matters as set forth herein; (v) special individual assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Parcel, or for such other purposes as stated herein; (vi) architectural review fees and costs as specified herein; (vii) fines for violations of Association rules and regulations with respect to use of the Common Property; (viii) late payment penalties and interest on unpaid assessments; and (ix) other charges imposed under authority contained in the Governing Documents (architectural review fees, fines, penalties, interest and other charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges. All assessments and other charges shall be established and collected as hereinafter provided. All assessments and other charges remaining unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a lien on the Parcel against which they are assessed or charged from the time of the filing of a lien in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Parcel at the time when the assessment or other charge first became due and payable. An Owner's

personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Parcel until the amounts due are paid. No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Property or such Owner's Parcel, or abandonment of a Parcel, or temporary unavailability of the use or enjoyment of the Common Property. If necessary to establish the right to collect reasonable attorneys' fees under the Declaration, any obligation of a Owner to pay assessments or other charges or monetary obligations under the Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act with respect to reasonable attorneys' fees.

Section 2. Liability for Assessments After Change in Membership Status.

No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under the Declaration because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Parcel, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under the Governing Documents.

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

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

Section 4. Annual Assessments.

(a) For calendar year 2003, the **maximum annual assessments** shall be as follows:

- (1) \$600.00 per Lot; and
- (2) \$300.00 per acre for Development Parcels.

(b) The **annual assessments** for calendar years 2003 shall be as follows:

- (1) \$480.00 per Lot; and
- (2) \$150.00 per acre for Development Parcels.

Beginning with the annual assessment for calendar year 2004, the Board shall establish the annual assessment at any amount not in excess of the maximum annual assessment for the applicable calendar year.

(c) Beginning with calendar year 2004, unless a different amount is determined by the Board as allowed in this paragraph, the maximum annual assessment for each calendar year shall be equal to 110% of the maximum annual assessment for the immediately preceding calendar year (for example, if the maximum annual assessment for the preceding calendar year was \$500.00, the maximum annual assessment for the current calendar year would be \$550.00, as $\$500.00 \times 110\% = \$550.00$). Provided, however, for any calendar year the Board, in its sole discretion by majority vote, may establish the maximum annual assessment for that calendar year at any amount equal to or greater than the amount for the immediately preceding calendar year, up to and including 110% of the amount for the immediately preceding calendar year. The amount finally determined as the maximum annual assessment for a calendar year shall be the amount used to determine the maximum annual assessment for the subsequent calendar using the 110% multiplier provided for in this paragraph.

(d) The maximum annual assessment for any calendar year may be established at an amount greater than 110% of the maximum annual assessment for the immediately preceding calendar year by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association for which notice of the meeting included notice of the proposal to increase the maximum annual assessment by more than 110% of the maximum annual assessment for the immediately preceding calendar year. Provided, however, unless otherwise provided in the vote of the membership approving the increase in the maximum annual assessment, the automatic increase in the maximum annual assessment for the year subsequent to any year in which the membership increases the maximum annual assessment above its limit as otherwise established pursuant to the Declaration, shall be calculated based on the maximum annual assessment using the 110% multiplier that would have been in effect if no action of the membership had been taken. Further provided, the provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken incident to a merger or consolidation in which the Association is authorized to participate under the Governing Documents or Legal Requirements.

(e) If the Board establishes the annual assessment at an amount less than the maximum annual assessment for any calendar year and, thereafter, during such calendar year, determines that such annual assessment is insufficient to pay the Common Expenses and other financial obligations of the Association, the Board, by majority vote, may levy one or more supplemental annual assessments. Provided, however, the total of the annual assessment plus all supplemental annual assessments assessed in any calendar year shall not exceed that calendar year's maximum annual assessment.

(f) After a Development Parcel has been fully developed in accordance with the Subdivision Plan, or a site plan or other development plan therefor approved by the City, the remaining acreage in the Development Parcel shall not be assessed for annual or special assessments, unless it later is developed into one or more Lots, in which

event it shall be assessed in accordance with the number of Lots into which it is developed. The determination of the time when such full development or subsequent Lot development has occurred shall be in the reasonable discretion of the Declarant, during the Development Period, and thereafter, the Association.

(g) Except as otherwise provided in the Declaration (for example, additional assessments for Limited Common Property and assessments for storm water management), all annual assessments shall be the same for the same type of property - for example, the same amount for all Lots and the same amount for all Development Parcels.

Section 5. Commencement of Assessments.

(a) All Parcels are subject to all assessments under the Declaration from and after the date on which such Parcels become subjected to the Declaration, either by the recording in the Registry of the Declaration or a Supplemental Declaration. Provided, however, and notwithstanding the foregoing, during the Declarant Control Period all portions of the Properties owned by the Declarant are exempt from annual assessments.

(b) With respect to Parcels that are conveyed by Declarant during the Declarant Control Period to a Person who is not a Declarant, for the year in which the conveyance occurs, the amount of that year's annual assessment for such Parcel is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that year from and after the day on which the conveyance occurs and whose denominator is the total number of days in that year.

(c) When the Declarant Control Period ends, the amount of that year's annual assessment for all Parcels then owned by Declarant is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that year from and after the day on which the conveyance occurs and whose denominator is the total number of days in that year (Declarant's Unsubdivided Land will be assessed as Development Parcels). Provided, however, if at any time or from time to time the Declarant Control Period is reinstated on or before the date that is six (6) months following the date on which the Declarant Control Period has ended, all portions of the Properties owned by Declarant at the time the Declarant Control Period is reinstated will be treated for purposes of annual assessments as if the Declarant Control Period had not ended.

Section 6. Assessment Deficit; Assessment Credit.

(a) Except as otherwise provided herein (for example, with respect to any storm water management assessment), during the Declarant Control Period the Declarant shall fund all annual operating budget deficits, if any, to the extent necessary to keep the Association solvent. The Declarant's deficit funding obligation may be satisfied with in-kind payments of services or materials, as well as with payment of money (including payment of Common Expenses from time to time directly to the provider of the material, labor or service provided). The Declarant's deficit funding obligation does not include any expenses that the Association is unable to meet because of nonpayment of any assessment by Owners other than the Declarant, or because of unusual or extraordinary expenses not included in the annual operating budget (for example, a judgment obtained against the Association, or a Common Expense obligation caused by the negligence or misconduct of any Owner or occupant. The deficit funding obligation of the Declarant may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

(b) Following the end of the Declarant Control Period, the Declarant will receive an "assessment credit" toward payment of assessments applicable thereafter to Declarant's portions of the Properties, in an amount equal to the following: the amount paid or provided by Declarant to fund its deficit funding obligation, less the amount of assessments that Declarant would have been obligated to pay the Association during the Declarant Control Period had Declarant's Unsubdivided Land been assessed at the same rate as Development Parcels and had Declarant's Lots been assessed at the same rate as the rate applicable to Class A Members. The assessment credit shall be applied to all assessments due from Declarant until it has been applied in full.

Section 7. Annual Operating Budget. Beginning with calendar year 2004, the Board shall adopt a proposed annual operating budget for the Association for each calendar year, containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that calendar year, including such reasonable amounts as the Board deems necessary to provide working capital (available for day-to-day operating expenses and otherwise uncommitted for specific expenses), reserves for contingencies, and reserves for replacement of Common Property. The Board shall give due consideration to the annual operating budget in establishing the annual assessment for that calendar year. Within thirty (30) days after adoption of same, the Board shall provide a summary thereof to all Members (provided, however, a copy or summary provided to any one of multiple Owners of a Parcel is deemed to be provided to all Owners of such Parcel), together with a notice of the annual or special meeting of the Association at which ratification of such proposed annual operating budget will be considered, including a statement that the proposed annual operating budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed annual operating budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed annual operating budget is to be considered (although if other matters are to be considered at such meeting applicable quorum requirements are in effect with respect to those other matters). The proposed annual operating budget is ratified unless at that meeting Members possessing sixty-seven percent (67%) or more of the total number of votes in the Association reject it. In the event that the proposed annual operating budget is rejected, the annual operating budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent annual operating budget proposed by the Board.

Section 8. Establishing the Annual Assessment. The Board shall establish the amount of the annual assessment for each calendar year beginning with calendar year 2004 (the annual assessment for 2003 having been established in the Declaration) and shall cause written notice of each annual assessment to be sent to at least one (1) of the Owners of each Parcel not less than thirty (30) days in advance of the payment due date specified in the notice (which shall not be earlier than January 1 of the applicable calendar year), which written notice may be in the form of an invoice for the annual assessment. The failure of the Board to establish the amount of any annual assessment or send timely notice as required herein shall not constitute a violation, waiver or modification of the provisions of the Declaration, or a waiver of the Board's right to establish and collect the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment (but when established, the amount of the new annual assessment shall be retroactive to January 1 of the applicable calendar year). If the annual assessment for any calendar year has not been established by December 31 of the immediately preceding calendar year, the Board may send a notice of assessment as provided herein for the amount of the

immediately preceding calendar year's annual assessment, together with notice that a new assessment may be established for that calendar year that may require an additional payment. Once the new annual assessment is established, any additional amount owed is due and payable by the payment due date specified in a supplemental notice to the Members; provided, such payment due date may not be less than thirty (30) days following the date of the notice.

Section 9. Collection of Assessments; Penalties for Late Payment.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined from time to time by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Owners. Provided, however, the Board shall have the power at any time and from time to time, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Owners.

(b) Subject to any limitations contained in the Declaration, other Governing Documents, or any Legal Requirement, the Board has the authority at any time and from time to time to establish the payment due dates, interest rate on unpaid amounts, and penalties for late payment of assessments and other charges. Assessments and other charges not paid by the payment due date shall bear interest at a rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest lawful rate under Legal Requirements, or (iii) the amount, if any, established by the Board (or, in the absence of any amount being established by the Board, the lesser amount otherwise established by this subsection). In addition to the obligation to pay the assessment and other charges and interest charges thereon, the defaulting owner also shall pay all of the Association's costs and expenses of collection thereof, including reasonable attorneys' fees.

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

Section 10. Special Assessments. In addition to the annual assessments authorized herein, except for matters related to storm water management by the Association (a storm water management assessment being established in another Section of the Declaration), and subject to the other requirements of the Declaration, at any time and from time to time the Association may levy a special assessment for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

(a) Maintenance of a capital improvement in or on the Common Property, including fixtures and personal property related thereto.

(b) Additions to the Common Property.

(c) The necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein.

(d) The Common Expenses of the Association, to the extent that such Common Expenses are not covered by annual assessments and applicable reserve funds.

(e) Repayment of any loan made to the Association to enable it to pay the Common Expenses or to perform the other functions and provide the other services required or authorized herein.

Each special assessment imposed under this Section first shall be approved by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association. Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the proposed special assessment. A special assessment shall be due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. In no event shall a special assessment for a Development Parcel exceed an amount per acre that is greater than the twenty-five percent (25%) of the amount of the special assessment for a Lot. Except as otherwise allowed by the Declaration, all special assessments shall be the same for the same type of property - for example, the same amount for all Lots and the same amount for all Development Parcels.

Section 11. Storm Water Management Assessment. Notwithstanding anything to the contrary in the Declaration, (i) if the Board determines that the amount required to pay for the Association's obligation for storm water management for any part or all of the Properties in any calendar year would cause the Association's total expenses for that year to exceed the amount that would be due and payable to the Association if all applicable portions of the Properties (including Lots and Unsubdivided Land owned by the Declarant) were assessed in the amount of the maximum annual assessment for that year (such excess amount of total expenses for that year being referred to in this Section as "excess expenses"), and (ii) the Board determines that there are not sufficient reserve funds available both to pay the excess expenses and continue to have an adequate amount of reserve funds, and (iii) the maximum annual assessment has been imposed for that calendar year on all applicable portions of the Properties, and (iv) Declarant has paid to the Association in that year an amount equal to the maximum annual assessment that would be applicable to all applicable portions of the Properties owned by Declarant as if the Declarant were a Class A Member, then the Board may assess, as an additional assessment for that year, a "storm water management assessment" in an amount sufficient to pay for the excess expenses. The amount of such storm water management assessment shall be determined and assessed as if the Declarant were a Class A Member of the Association at that time. The payment due dates for such storm water management assessment shall be as determined by the Board and shall be enforceable against Owners and their respective portions of the Properties in the same manner as annual assessments. Provided, however, during the Development Period no such storm water management assessment shall be valid unless the same shall have been consented to in writing by the Declarant. Further provided, except as may be necessary to account for different storm water management facilities and/or funding agreements applicable to different portions of the Properties as allowed in the Declaration, all storm water management assessments shall be the same for the same type of property - for example, the same amount for all Lots and the same amount for all Development Parcels. Any storm water management assessment for excess expenses is in addition to all other assessments provided for herein.

Section 12. Certification of Assessments Paid. The Association (or any property manager authorized by the Association), upon demand and payment of a reasonable charge or fee established by the Association, shall

furnish to any Owner or such Owner's authorized agent, or to any holder of a first lien deed of trust on a Parcel, or to an attorney who represents the Owner or a prospective purchaser of such Parcel, or to any other Person approved by the Board, a certificate signed by an officer of the Association or other Person authorized by the Board to give such certificate setting forth whether or not the assessments and other charges owed by such Owner have been paid. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and, except in the event of any willful misstatement made by the issuer of the certificate, it shall be binding on the Association, the Board and every Owner.

Section 13. Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is an Owner of the Parcel against which they are assessed or charged. Any assessment or other charge not paid on or before the payment due date and remaining unpaid for a period of thirty (30) days or longer, together with the fines, penalty and interest charges as provided in the Declaration, plus the costs of collection (including reasonable attorneys' fees), shall be a charge and continuing lien on the Parcel (and all Improvements thereon) against which they are assessed or charged from and after the date on which a claim of lien is filed by the Association in the office of the Wake County Clerk of Court. Except as otherwise provided in the Declaration or by Legal Requirements, such lien shall be superior to all other liens and charges against the Parcel and Improvements thereon. The Board shall have the power, in its sole discretion, to subordinate the lien to any other lien. The claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Parcel at the time the claim of lien is filed, a description of the Parcel, and the amount of the lien claimed. In addition to the claim of lien, the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under a power of sale or in any other manner allowed or required by Legal Requirements, and/or the Association may institute suit against the Owner personally obligated to pay the assessment or charge, and/or the Association may seek any other available remedy or relief. In any foreclosure proceeding the defaulting Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on and purchase the Parcel at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Parcel are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

Section 14. Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Parcel except (i) liens and encumbrances (specifically including a first lien mortgage or deed of trust on a Parcel) recorded before the docketing of the claim of lien in the office of the Wake County Clerk of Court, and (ii) liens for real estate taxes and other governmental entity assessments and charges against the Parcel. Provided, however, this Section does not affect the priority of mechanic's or materialmen's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the office of the Wake County Clerk of Court. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Parcel obtains title to the Parcel as a result of foreclosure of a first mortgage or first deed of trust or deed or other proceeding in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Parcel which became due prior to the acquisition of title to such Parcel by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such purchaser, its heirs,

successors, and assigns in the event that the Association is unable to collect, or chooses not to pursue collection, from the Person who was the Owner of the Parcel during the time the assessments were assessed against the Parcel.

Section 15. Exempt Property. All Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

Section 16. Reserve Funds. From the annual assessments and working capital assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for working capital, contingencies, and acquisition and replacements of Common Property. Reserve funds are subject to the following:

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

(b) If reserve funds become excessive, as determined by the Board, the Board may adjust the reserve funds by reallocation to other annual operating budget items or by applying excess amounts as credits against annual assessments, or by refunding the excess amount to the then Owners.

Section 17. Working Capital Assessment. At the first closing of the sale of each Lot after a Dwelling has been constructed thereon (except for a Lot on which an Apartment Unit is located), the purchaser of the Lot and Dwelling shall pay to the Association at the time of the closing of the purchase a "Working Capital Assessment" in the amount of \$300.00, to be applied to payment of Common Expenses as determined by the Board. The Working Capital Assessment shall be paid only once with respect to each such Lot, and is in addition to all other assessments. All Working Capital Assessments may be enforced and collected in the same manner as all other assessments.

Section 18. Additional Assessments for Limited Common Property.

(a) The Declarant reserves the right, by recording Supplemental Declarations or Subdivision Declarations or other documents, to subject portions of the Properties located in one or more phases, sections or subdivisions in the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of, and addition to, Limited Common Property, including any one or more of the following: (i) private streets; (ii) alleys; (iii) landscaping, signs and decorative features; and (iv) storm water management facilities.

All of the provisions of the Declaration relating to annual assessments, special assessments and storm water management assessments shall apply to the additional annual assessments, special assessments and storm water management assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against those Owners of portion of the Properties to which such Limited Common Property is allocated; (ii) the initial additional maximum

annual assessment and additional annual assessment for each Limited Common Property shall be established in the Supplemental Declaration or Subdivision Declaration that creates or establishes that Limited Common Property; (iii) the additional annual assessments, special assessments and storm water management assessments may vary from phase to phase, section to section or subdivision to subdivision; and (iv) the additional annual assessments, special assessments and storm water management assessments for portions of the Properties in any particular phase, section or subdivision of the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section or subdivision.

Section 19. No Default Under Insured Mortgage. Nothing contained in the Declaration shall be construed as stating or implying that any failure of an Owner to pay assessments constitutes a default under any mortgage on such Owner's Parcel that is insured by the FHA or VA, or any mortgage program administered by either of said agencies.

Section 20. Apartment Units. At the time of the recording of the Declaration, Declarant does not anticipate that any portion of the Properties will be developed into Apartment Units. However, during the Development Period Declarant reserves the right, by recording a Supplemental Declaration, to create a sub-class of Class A Members for Apartment Units, and to establish assessment amounts or percentages for Apartment Units different from what is applicable to Lots and Development Parcels.

ARTICLE VII INSURANCE

Section 1. General Provisions.

(a) The Board shall have the power on behalf of the Association to: (i) purchase insurance policies relating to the Common Property and the activities of the Association; (ii) adjust all claims arising under such policies; and (iii) sign and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board as allowed or required by the Declaration is a Common Expense. Neither the Board, nor a property manager, nor Declarant, shall be liable for failure to obtain any insurance required by this Article, or for any loss or damage that could have been paid by such insurance, if such insurance is not reasonably available. With respect to insurance required by Legal Requirements, either by hand delivery, or United States Mail, postage prepaid, or by other method allowed by the Declaration or Legal Requirements, the Association promptly shall notify the Owners if such insurance is not reasonably available, or if there is any material adverse modification, lapse, or cancellation of, such insurance that is not being replaced by other insurance.

(b) To the extent such policy provision is reasonably available, no policy obtained by the Association shall be canceled, invalidated or suspended due to the conduct of any Owner, or such Owner's lessee or such Owner's (or lessee's) household members, guests, employees or agents, or of any director, officer or employee of the Board, or the property manager, without a prior demand in writing that the Association or the property manager cure the defect and such defect is not cured within thirty (30) days after such demand.

(c) An insurer that has issued an insurance policy to the Association for property insurance on the Common Property or for liability insurance shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each Owner and mortgagee to whom certificates or memoranda of insurance have been issued, to their respective last known addresses.

(d) All policies of insurance obtained by the Association shall be written by reputable companies licensed or qualified to do business in North Carolina.

(e) The deductible or retained limit (if any) on any insurance policy obtained by the Association shall be a Common Expense.

(f) The Association may procure such fidelity bonds as the Board determines from time to time are reasonable or necessary, including such bonds as may be necessary to comply with Legal Requirements and to satisfy the requirements of FHA, VA, FNMA, Office of Interstate Land Sales Registration of the Department of Housing and Urban Development ("OILSR") or other governmental agency Secondary Mortgage Market Agency.

Section 2. Property Insurance.

(a) Commencing not later than the first conveyance of a Lot to a Class A Member other than a Builder, the Association, to the extent that it is reasonably available, shall obtain and maintain property insurance on the Common Property insuring against all risks of direct physical loss commonly insured against, including fire damage and extended coverage perils. The total amount of such insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Board shall also obtain and maintain appropriate coverage on personal property owned by the Association.

(b) Each such property policy also shall provide:

(1) that each Owner is an insured person under the policy to the extent of such Owner's insurable interest;

(2) that the insurer waives its right to subrogation under the policy against any Owner or member of that Owner's household;

(3) that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) that any "no other insurance" clause expressly excludes individual Owner's policies from its operation so that the Association's policy provides primary coverage and any individual Owners' policies covering the same risk shall be excess coverage, and in no event shall the insurance coverage obtained and maintained

by the Association hereunder provide for or be brought into contribution with insurance purchased by Owners or Mortgagees, unless otherwise required by law;

(c) Certificates of property insurance on the Common Property, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Institutional Lender requesting the same.

Section 3. Liability Insurance. Commencing not later than the first conveyance of a Lot to a Class A Member other than a Builder, the Association, to the extent that it is reasonably available, shall obtain and maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property. "Umbrella" liability insurance in excess of the primary limits may be obtained in reasonable amounts as determined by the Board in its sole discretion.

Section 4. Other Insurance or Bonds. The Association may obtain and maintain other insurance or bonds as follows:

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

(b) if required by a majority of the Institutional Lenders or any applicable Legal Requirement, flood insurance on the Common Property in accordance with the then applicable regulations for such coverage.

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

(d) directors and officers liability insurance.

(e) such other insurance or bonds as the Board may determine from time to time in the exercise of its reasonable discretion, or as may be requested from time to time by the affirmative vote of a majority of the Members present at a duly called meeting of the Association.

Section 5. Owners' Insurance. In addition to any insurance policy issued to the Association, each Owner shall have the right to acquire and maintain insurance for such Owner's benefit, at such Owner's expense.

Provided, however, no Owner shall acquire or maintain insurance coverage on the Common Property so as to: (i) decrease the amount which the Association may realize under any insurance policy maintained by the Association; or (ii) cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage acquired or maintained by an Owner.

ARTICLE VIII REPAIR AND RESTORATION OF THE PROPERTIES

Section 1. When Required.

(a) Common Property. If all or any part of the Common Property for which property insurance required under the Declaration or Legal Requirements is damaged or destroyed, the Association promptly shall repair or replace same unless (i) the Declaration is terminated, (ii) repair or replacement would be illegal under any Legal Requirement, or (iii) the Members decide not to repair, restore or replace by a vote of eighty percent (80%) or more of the votes cast by the Members present at a duly called meeting of the Association (which vote, during the Declarant Control Period, also must be have the affirmative vote of a majority of the Class A Members who are present at such meeting, and which vote, with respect to any Limited Common Property, must have the approval of one hundred percent (100%) of the Members to which such Limited Common Property is allocated). The cost of repair or replacement in excess of insurance proceeds and applicable reserves is a Common Expense, for which there may be a special assessment against the applicable Members.

If the damage is not repaired or replaced, then (i) the Association, first using the insurance proceeds attributable to the damaged property, shall remove all remnants of the damaged improvements and restore the damaged area to a condition compatible with the remainder of the Properties, (ii) the insurance proceeds attributable to Limited Common Property which are not repaired or replaced shall be distributed to the Members to whom such Limited Common Property was allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the insurance proceeds shall be distributed to all of the Members or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all of the Parcels. Provided, however, and notwithstanding the foregoing, if the Declaration is terminated, the distribution of insurance proceeds shall be in compliance with the applicable requirements of the Act.

(b) Parcels. If a Dwelling or other Improvement located upon a Parcel is damaged or destroyed, the Owner thereof shall restore the site either: (i) by repairing or replacing such Dwelling or other Improvement; or (ii) by clearing away the debris and restoring the Parcel to a condition compatible with the remainder of the Properties. Unless the Architectural Review Committee permits a longer time period, such work must be commenced within six months and substantially completed within twelve months after the occurrence of the damage or destruction. Any repair or replacement that differs in any material respect from the previously Approved Plans for the Dwelling or other Improvement that was damaged or destroyed first must be approved by the Architectural Review Committee in the manner required herein.

Section 2. Eminent Domain.

(a) Definitions. For the purposes of this Section, "Taking" means an acquisition of all or any part of the affected portion of the Properties or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain, or a change of grade caused by the action of the City affecting the value of the applicable portion of the Properties or any part thereof so severely as to amount to condemnation.

(b) Taking of Parcel. If there is a Taking of all of a Parcel, or a Taking of part of a Parcel leaving the Owner with a remnant which practically or lawfully may not be used for any purpose permitted under the Declaration, the award shall compensate the Owner for the Parcel and the Owner's interest in the Common Property. Upon such Taking, there shall be no votes in the Association allocated to such Parcel, or remnant thereof, nor shall such Parcel or remnant thereof, be subject to any further assessments under the Declaration, the Parcel's "allocated interests" (as defined in the Act) automatically are to be reallocated as provided in the Act, and the remnant remaining following a partial Taking shall be Common Property.

If there is a Taking of part of a Parcel that leaves the Owner with a remnant which practically and lawfully may be used for any purpose permitted under the Declaration: (i) the award shall compensate the Owner for the reduction in value of the Parcel; and (ii) with respect to determining the award and the allocated interests of the Parcel in the Association following the Taking, there shall be no reduction in the vote allocated to that Parcel nor in the assessments assessed against such Parcel.

(c) Taking of Common Property. If there is a Taking of all or any part of the Common Property, then the Association shall notify the Owners, but the Board shall act on behalf of the Association in connection with the Taking and no Owner shall have any right to participate in the proceedings incident thereto as an Owner. The award made for such Taking shall be payable to the Association. If the Taking involves a portion of the Common Property on which improvements have been constructed, then the Association, to the extent reasonably practicable and in accordance with plans reasonably adopted by the Board, shall restore or replace such Common Property improvements, unless a contrary determination is made by Declarant, during the Declarant Control Period, or, following the end of the Declarant Control Period, by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association.

If any portion of any award for a Taking of the Common Property is attributable to any Limited Common Property, such portion of the award shall be apportioned equally among the Owners of the Parcels to which the Limited Common Property was allocated at the time of the Taking.

ARTICLE IX
USE OF THE PROPERTIES; PROTECTION OF COMMON PROPERTY

Section 1. Use of the Properties. No portion of the Properties shall be used for other than residential, recreational or substantially related purposes which are allowed under applicable City zoning ordinances for residential zoning districts (unless such substantially related purposes are prohibited by other provisions of the

Declaration). Provided, however, and notwithstanding the foregoing sentence, during the Development Period and subject to Legal Requirements: (i) Declarant, and any Builder or other Person with Declarant's consent, may maintain model homes, sales offices and temporary construction trailers and other facilities within the Properties for the purpose of conducting business related to the development, improvement and/or sale of any part or all of the Properties; and (ii) Declarant, and any Builder or other Person with Declarant's consent, may conduct such business activities within the Properties as may be necessary in connection with the development and/or sales or marketing of any part or all of the Properties.

Section 2. Owner Liability. If any Owner is legally responsible for damage inflicted on any Common Property, the Association may direct such Owner to repair such damage, or the Association itself may cause the repairs to be made and recover damages from the responsible Owner, including costs incurred in seeking and enforcing such recovery or other applicable legal remedies, including reasonable attorneys' fees.

Section 3. Legal Requirements. Nothing herein contained shall be deemed to constitute a waiver of any Legal Requirement applicable to any portion of the Properties, and all Legal Requirements relative to the construction of Improvements on, and/or use and utilization of, any portion of the Properties shall be complied with by the Owners and occupants of such portions of the Properties, whether or not the Approved Plans for same are in compliance with such Legal Requirements. Provided, that in any instance in which the provisions of the Declaration impose a more restrictive requirement than the Legal Requirements, the provisions of the Declaration shall be complied with in addition to the Legal Requirements.

Section 4. New Construction. Except as otherwise allowed by the Declarant during the Development Period, construction of new Dwellings only shall be permitted on Parcels, it being the intent of this Section to prohibit the moving of any existing building or structure onto any Parcel and remodeling or converting same into a Dwelling without the consent of the Declarant. Provided, however, the foregoing shall not be construed as prohibiting maintenance of, remodeling of, or construction of additions to, existing Dwellings that previously have been constructed in compliance with the Declaration, provided that such maintenance, remodeling or additions is performed in accordance with the Approved Plans therefor.

Section 5. Rules of the Association. All Owners and occupants of Parcels shall abide by all rules and regulations for the Common Property adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and fines, including costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

Section 6. Temporary Structures Prohibited. No structure of a temporary character shall be used on any portion of the Properties at any time as a Dwelling.

Section 7. Wetlands; Neuse River Buffers. Portions of the Properties may have been determined to meet Legal Requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or not the Approved Plans for any improvements on the portion of the Properties on which such wetlands are located

are in compliance with applicable wetlands rules, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under Legal Requirements shall conform to the requirements thereof in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill or alteration except as allowed under Legal Requirements, so the Owner of any such portion of the Properties should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the development (in this case, Highcroft P.U.D.), together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules under Legal Requirements and this Section may be enforced by the United States, State of North Carolina or any other governmental entity having jurisdiction over the subject wetlands. Portions of the Properties also may be subject to Neuse River Buffer requirements in connection with the Neuse River and its tributaries. Owners of all portions of the Properties subject to such Neuse River Buffer requirements shall at all times comply with same, whether or not the Approved Plans for any improvements are in compliance therewith. The provisions of this Section shall run with the Properties and be binding on all Owners of any part or all of the Properties and all persons claiming under them.

Section 8. Animals. No animals of any kind (including livestock, reptiles or poultry) shall be kept on any portion of the Properties or in any Dwelling except for dogs, cats or other household pets which are not used for breeding or other commercial purposes, and provided that they do not create a nuisance (in the judgment of the Board), by number of animals, noise, odor, damage or destruction of property, animal waste, or any other reason, and further provided that they are kept in compliance with all Legal Requirements and such rules and regulations pertaining thereto as the Board may adopt from time to time, which rules and regulations may include requirements that all such animals be kept on a leash or otherwise restrained whenever they are anywhere on the Properties other than on the Owner's Parcel or other areas specifically designated for animals not on leashes, and that animals not be allowed on the Recreational Amenities, except in connection with activities specifically approved by the Board. The Owner responsible for an animal being on the Properties promptly shall clean up or remove from the Properties all solid bodily wastes from that animal.

Each Owner who keeps any animal on any portion of the Properties shall be deemed to have indemnified and agreed to hold harmless the Association, Declarant and all other Owners, from and against any loss, claim for damages to person or property, cause of action, or liability of any kind, including all costs of defending against same (including reasonable attorneys' fees), arising out of or resulting from such animal, including any actions of the animal. An easement over and upon the Properties hereby is reserved for the City to exercise and enforce all Legal Requirements relating to animal control.

Section 9. Antennas and Other Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas and satellite dishes or other device for reception of television or radio signals) shall be made to the roof or exterior walls of any Dwelling or other building on any portion of the Properties, nor shall the same be located on any portion of the Properties outside of any Dwelling or other building, unless such attachments first shall have been submitted to and approved by the Architectural Review Committee. Provided, however, the Association shall not prevent access to telecommunication services in violation of any Legal Requirement. Generally, exterior antennas, satellite dishes greater than one meter (39 inches) in diameter, or satellite dishes or other reception devices located in or on the front

of a Dwelling or other building, will not be allowed on the Properties. Provided, however, (i) an Owner may install an antenna permitted by any applicable architectural guideline upon prior written notice to the Architectural Review Committee; (ii) the Architectural Review Committee may approve other antennas in appropriate circumstances; and (iii) the Architectural Review Committee may amend existing guidelines and/or establish additional guidelines as technology changes. Further provided, the Association may, but shall not be required to, install and maintain antennas, satellite dishes or similar equipment in or on the Common Property to serve the Common Property and/or the Properties. No outdoor clotheslines shall be allowed on any portion of the Properties.

Section 10. Boats, etc. No motorboat, houseboat or other similar water-borne vehicle, airplane, travel trailer, other trailer, or "camper" vehicle shall be maintained, stored or kept on any portion of the Properties, except in enclosed garages or screened areas approved by the Architectural Review Committee, nor shall any of the foregoing at any time be parked on any street within the Properties.

Section 11. Fences, Walls and Hedges. Except as specifically approved in writing by the Architectural Review Committee with respect to Approved Plans or in architectural guidelines, or except as maintained by the Association on any Common Property, no fence shall be maintained on any Parcel, and no fence, wall or hedge shall be maintained on any Parcel nearer to any street adjoining the front of such Parcel than the front corner of the Dwelling thereon, and shall not exceed four (4) feet in height. All fences, walls and hedges on Parcels shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair, and shall consist of materials approved by the Architectural Review Committee. Provided, however, the foregoing shall not be construed to prohibit, or require prior Architectural Review Committee approval for, fencing to contain trash or "silt" fencing or other soil erosion control fencing or construction fencing used in connection with the construction or maintenance of Improvements on Parcels.

Section 12. Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances from any portion of the Properties into the atmosphere (other than those resulting from cleaning or normal, residential chimney or outdoor grill emissions), there shall be no production, storage or discharge of hazardous wastes from or on any portion of the Properties, and there shall be no discharges of liquid or solid wastes or other harmful matter into the ground, sewer or any body of water within the Properties, if such emission, production, storage or discharge may adversely affect the use of any portion of the Properties, or may adversely affect the health, safety or comfort of the occupants of the Properties. Provided, however, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties or improvements thereon by Declarant or any other Person in accordance with Legal Requirements, nor shall they prevent the reasonable use, handling, storage and disposal of medically related hazardous substances and wastes in compliance with all Legal Requirements.

Section 13. Home Businesses. An Owner may maintain an office or home business on such Owner's Parcel or in any Dwelling or other improvement located on the Parcel only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Parcel, or by Owner's tenant residing on the Parcel; (ii) there are no displays or signs indicating that the Parcel or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage (as determined by the Board) by clients, customers or other Persons; (iv) no equipment or other items related to the office or business is stored, parked or otherwise kept on such Owner's Parcel outside of the Dwelling or other enclosure approved by

the Architectural Review Committee; (v) such Owner has obtained from the City, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all Legal Requirements and other provisions of the Declaration; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Parcel or the Owner's tenant residing on the Parcel; and (viii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Association as long as the operation of the home business continues. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all Legal Requirements and the rules and regulations, if any, adopted by the Board.

Section 14. Hunting; Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows and/or other weapons within the Properties is prohibited, unless required for public or private safety.

Section 15. Landscaping; Utility Lines. No fence, wall, tree, hedge shrub or other planting which obstructs sight lines for vehicular traffic on public or private streets in the Properties shall be placed or permitted to remain on any portion of the Properties. Pavement, plants, trees and other landscape and decorative materials shall not be placed or permitted to remain on any portion of the Properties: (i) if such materials may damage or interfere with any easement for the installation or maintenance of utilities; or (ii) in violation of the requirements of such easements; or (iii) unless in conformity with applicable standards of the holder of the easement; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any storm water drainage. Otherwise, the installation and maintenance of such materials within utility easements shall be permitted. Except for hoses, temporary lines and other equipment reasonably necessary in connection with construction or maintenance activities or normal landscape or yard maintenance, no water pipe, sewer pipe, gas pipe, storm water drainage pipe, television or telephone cable, electric line or other, similar transmission line shall be installed or maintained on any Parcel above the surface of the ground, except for those located in easements maintained by the City or applicable public utility provider or otherwise required by the City or applicable public utility provider, or as necessary for such pipes, lines and other facilities to function properly, or as approved by Declarant during the Development Period, or as approved by the Board following the end of the Development Period.

Section 16. Lighting. No exterior lighting on any portion of the Properties shall be directed outside the boundaries thereof, except for required street and parking lot lighting and as otherwise approved by the Architectural Review Committee. Typical residential floodlights and decorative lights directed toward the Dwelling on a Parcel shall be permitted when used in a reasonable manner. All exterior lighting that is not in conformity with applicable architectural guidelines, if any, first shall be approved in writing by the Architectural Review Committee.

Section 17. Mailboxes and Newspaper Tubes. All mailboxes, unless affixed to the Dwelling (which may occur only if approved by the Architectural Review Committee or if required by any Legal Requirement), shall be affixed to a substantial pole or stand permanently placed in the ground and shall not be located within a sidewalk. Newspaper tubes shall conform to the architectural guidelines for same, if any. Architectural guidelines with respect to mailboxes and newspaper tubes may require, prohibit, restrict or specify one or more of the following: method and type of support; style; material; color; size; height; and one or more of the foregoing with respect to the

numbering and/or lettering to be placed on a mailbox or newspaper tube, or affixed thereto. There may be different mailbox and newspaper tube requirements for the various phases, sections or subdivisions within the Properties.

Section 18. Motorized Vehicles; On-Street Parking. All motorized vehicles operating within the Properties, including automobiles, motorcycles, trucks, lawn mowers, and golf carts, must have proper and adequate mufflers. Each Owner, or any applicable Sub-Association, shall provide for adequate parking space on such Owner's Parcel or on Sub-Association Common Property for all motorized vehicles and bicycles regularly used in connection with such Parcel or Sub-Association Common Property. No vehicles of any kind or any other apparatus designed for movement over and upon streets or highways (whether self-propelled or not) shall be parked in the Common Property (except in areas, if any, designated for parking) or regularly parked on the streets within or adjoining the Properties, and trucks with tonnage in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Properties, except that, during the Development Period Declarant, and thereafter, the Board, may allow such parking by any vehicles used in connection with the construction or maintenance of improvements within the Properties. In addition to and supplemental to the foregoing, the Association may promulgate and enforce rules and regulations relating to parking on the streets within or adjoining the Properties, including allowing temporary on street parking for special events related to the Recreational Amenities or community activities.

Section 19. Noises. No Person shall cause any unreasonably loud noise anywhere on the Properties, except for security devices used in the manner intended therefor, nor shall any Person permit or engage in any activity, practice or behavior resulting in substantial and unjustified annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Properties. Provided, however, the prohibition against noises contained in this Section shall not preclude or limit activities on the Recreational Amenities or other Common Property or Sub-Association Common Property conducted in accordance with the applicable rules and regulations of the Association, including swim meets and other athletic and social events. Further provided, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties or improvements thereon by the Association, Declarant or any other Person in accordance with Legal Requirements or the Governing Documents

Section 20. Nuisance and Other Matters. No noxious or offensive activity shall be conducted upon any portion of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Provided, however, the usual, customary or reasonable use and maintenance of a Parcel, a Dwelling, the Recreational Amenities, or any other Common Property, shall not constitute a nuisance. Further provided, the development of the Properties by Declarant and Builders, and the usual, customary or reasonable construction and maintenance of Dwellings and other improvements in the Properties shall not constitute a nuisance. Further provided, the operation and use of the Recreational Amenities in the manner required or allowed by the provisions of the Declaration shall not constitute a nuisance.

No trade materials or inventories (other than materials used for construction of Dwellings or other approved structures or improvements) shall be stored upon any portion of the Properties and no tractors, inoperable motor vehicles, rubbish, trash, or unsightly materials of any kind shall be stored, regularly placed, or allowed to remain on any portion of the Properties unless adequately screened or contained as approved by the Architectural Review Committee, except that trash, leaves, tree limbs, materials for recycling pick-up and similar items may be kept or

placed temporarily and only for such time as is reasonably necessary to enable the City or appropriate private entity to remove same, and inoperable motor vehicles may be stored if the same are kept entirely in an enclosed garage. Provided, however, as approved by Declarant during the Development Period, trucks and/or other construction vehicles, materials and equipment may be allowed to remain on the Properties temporarily during construction of roads, utilities, the Recreational Amenities, Dwellings and other improvements in the Properties, and such vehicles, materials and equipment also may be allowed to remain on the Properties during construction or maintenance on the Properties of Dwellings and/or other improvements which have been approved by the Architectural Review Committee. Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any Legal Requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or maintenance of streets, utilities or other improvements in the Properties, or as may be allowed by Declarant, during the Development Period, and thereafter, the Board, when reasonably required for the construction or maintenance of other improvements within the Properties.

Section 21. Obstructions, etc. No Owner shall obstruct any of the Common Property, City greenways or greenway easements or any pedestrian access easements providing access to Common Property or City greenways or greenway easements, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Property or removed therefrom (except as necessary to prevent injury to person or property), without the prior consent of Declarant, during the Development Period, and, thereafter, the Board, or except in the exercise of any valid easement over any portion of the Common Property. Provided, however, the Association, and, during the Development Period Declarant and Builders (with Declarant's consent), shall have the right to maintain signs in and on the Common Property, and to maintain in the Common Property such materials, equipment and other apparatus, as may be reasonably necessary to enable the Association to perform its functions and provide the services under the Declaration, or to enable Declarant or such Builders to market and sell the Properties. The rights of use and enjoyment of the Common Property conferred upon Owners by the Declaration do not include the right to interfere with the Declarant's, any Builder's, or the Association's use or maintenance of the Common Property.

Section 22. Prohibition on Use for Streets. Without the written consent of Declarant during the Development Period (and, thereafter, by the Board), which consent may be given or denied in its sole discretion (and which consent may be given and evidenced by the execution by the consenting party of a plat recorded in the Registry), no Lot may be used, established or dedicated as a public street right of way or a private street right of way or driveway, where one of the purposes therefor or results thereof is to provide pedestrian or vehicular access to any property that is not part of the Properties, except for such vehicular and/or pedestrian access easements as are described or shown in documents or on plats of the Properties recorded in the Registry and are established to provide access to Common Property or to City greenways or greenway easements.

Section 23. Restricted Actions by Owners. No Owner shall do or permit anything to be done or kept within the Properties or on the Common Property which will result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any Legal Requirement or any rule or regulation established by the Association. No waste shall be committed on the Common Property, except as may be necessary to enable Declarant, a Builder, the Association or the holder of an easement to exercise any rights

reserved to them hereunder or provided in an applicable easement, or except as may be necessary to enable the Association to perform its functions and provide services under the Declaration. Each Owner shall comply with all Legal Requirements applicable to any part or all of the Properties, including applicable zoning ordinances and building codes.

Section 24. Sewer Systems. As long as reasonably adequate sanitary sewer service is available from the City to service a Parcel, no private sewage system shall be permitted on that Parcel (this Section does not prohibit temporary waste collection/disposal facilities used during construction or maintenance of improvements on the Properties).

Section 25. Signs. No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during the Development Period, and thereafter, by the Board, and which are for one or more of the following purposes: (i) advertising a portion of the Properties for sale or rent; (ii) advertising the Builder or other Person constructing Improvements on a Parcel during the construction and/or sales period; (iii) identifying the subdivision name of the Properties or of a phase, section or subdivision of the Properties, or the number or street address of a Parcel or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) identifying any portion of the Common Property; (v) signs required by the City or a utility provider, whether or not approved by Declarant or the Board; and (vi) any other purpose approved by Declarant, during the Development Period, and thereafter, by the Board; provided however, the foregoing limitations shall not restrict or prohibit Declarant (or, at the appropriate time, the Board) or the City from maintaining on any portion of the Properties signs describing the identity, location, or "for sale" character of the Properties, or portions thereof, or signs identifying various phases, sections or subdivisions of the Properties, or regulatory, street and directional signs. All signs maintained on any portion of the Properties must comply with all Legal Requirements.

Section 26. Soil Erosion Control. During all periods of construction on any portion of the Properties, the Owner thereof, or the Person exercising easement rights thereon, shall maintain proper and adequate soil erosion control to protect other portions of the Properties from accumulated silt and other soil erosion.

Section 27. Tree Cutting. No live trees with a diameter in excess of six (6) inches, measured at ground level, nor "flowering trees" (such as dogwood or redbud) or broad leaf evergreens (such as holly, laurel or rhododendron) trees in excess of two (2) inches in diameter, similarly measured, no live vegetation on slopes of greater than twenty percent (20%) gradient or marked "no cut" areas on Approved Plans, may be cut without the prior written approval of the Architectural Review Committee, unless necessary to construct Improvements based on Approved Plans or to prevent injury to Persons or property. Further, no live trees planted by the Declarant or any Builder to comply with Legal Requirements shall be cut without the prior written approval of the Person who planted same or, following the end of the Development Period, by the Association. The Association may adopt rules and regulations for cutting of trees to allow for selective clearing or cutting.

Section 28. Utility Yards. One or more utility yards shall be provided for each Parcel or groups of Parcels (for example, Parcels which contain attached townhome Dwellings, Condominium Units or Apartment Units), as required by the Architectural Review Committee. A "utility yard" is an area within which one or more of the following is wholly located: pens, yards and houses for pets; above ground garbage and trash cans or receptacles,

above ground and exterior air conditioning, heating and other mechanical equipment, meters, transformers and other utility equipment; and all other structures and objects determined by the Architectural Review Committee to be of a similar nature to the foregoing items or determined by the Architectural Review Committee to be of an unsightly nature or appearance. Each utility yard shall be screened or fenced or otherwise enclosed as required by the Architectural Review Committee. Provided, however, nothing in the Declaration shall prohibit location of trash cans, meters, transformers or other equipment in such places as required by the City or applicable public utility provider.

Section 29. Water Systems. As long as reasonably adequate potable water service is available from the City to service a Parcel, no private potable water system shall be permitted on that Parcel. Provided, however, private wells for irrigation purposes may be allowed in accordance with Approved Plans or applicable architectural guidelines. With respect to private wells, the Owner on whose Parcel any such private well is located shall indemnify, defend and hold harmless the Association, the Declarant and other Owners of and from any and all claims of damages for injury to person or property, and all other causes of action and legal proceedings (including matters related to environmental hazards), and including the costs of defending against same (including reasonable attorney fees) that arise out of or result from the maintenance of any such private well on such Parcel.

Section 30. Waiver. Notwithstanding any other provision of the Declaration or any other Governing Documents, Declarant, during the Development Period (and thereafter, the Board) has the right at any time, and from time to time, temporarily (as determined in the discretion of Declarant or the Board, as applicable) to waive any one or more of the provisions of this Article with respect to construction or maintenance of any improvements in the Properties, except that there shall be no waivers with respect to soil erosion controls and Legal Requirements.

ARTICLE X ARCHITECTURAL APPROVAL

Section 1. Architectural Review Committee - Jurisdiction and Purpose. Except for ordinary and routine maintenance to an existing Dwelling or other Improvement on a Parcel, and excluding areas within a Dwelling or other building on a Parcel visible from the exterior only because of the transparency of doors, walls or windows, and excluding planting and maintenance of flowers, bushes, grass and trees that do not result in any material change in the landscaping for a Lot approved as part of the Approved Plans ("material" being as determined from time to time by the Architectural Review Committee): no site preparation of a Parcel, no change in grade or slope, no construction of any Dwelling or other Improvement on a Parcel or exterior additions or exterior alterations to any Dwelling or other Improvement thereon, and no construction of, or alterations or additions to, the exterior of any other Improvement on a Parcel shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the "Architectural Review Committee" has approved in writing the Plans therefor. The Architectural Review Committee is established to assure that Improvements are constructed and maintained in a manner that provides for harmony of external design and location in relation to Dwellings and Improvements in the Properties, natural features and topography, that avoids Improvements deleterious to the aesthetic or property values, and that promotes the general welfare of the Owners. Notwithstanding anything to the contrary expressed or implied herein, all Improvements constructed or maintained by Declarant or the Association within the Properties, all portions of the Properties owned by Declarant or the Association, all Common Property and Improvements therein maintained

by the Association, and all portions of the Properties owned by the City or owned by or subject to easements in favor of public utility providers, are specifically excluded from the requirements of this Article. The Architectural Review Committee also is established to exercise jurisdiction over other matters specifically assigned to it in the Declaration.

Section 2. Composition and Duration. During the Development Period, the Architectural Review Committee shall consist of Persons appointed thereto by Declarant, or Declarant may serve as the Architectural Review Committee. Declarant has the right at any time and from time to time to remove and replace the Persons appointed by it to the Architectural Review Committee. Following the end of the Development Period, the Architectural Review Committee shall consist of not less than three (3) members, who shall be appointed by, and shall be subject to removal with or without cause by, the Board. Persons who serve on the Architectural Review Committee are not required to be Members of the Association.

Section 3. Procedure.

(a) Unless otherwise permitted by the Architectural Review Committee in its sole discretion, prior to the commencement of any construction, alteration, addition, or placement of any Improvement requiring approval by the Architectural Review Committee, Plans for the proposed Improvement shall be submitted to the Architectural Review Committee, in such format and in such numbers or sets (not to exceed three) as the Architectural Review Committee may require. The Architectural Review Committee shall have the right to refuse to approve any Plans for Improvements which are not, in its sole discretion, suitable or desirable for the Properties, including purely aesthetic reasons. Unless a written response is given by the Architectural Review Committee within sixty (60) days following its receipt of the required number of complete sets of Plans and payment by the applicant of any applicable processing fee and consulting fees due and payable at the time request for approval of Plans is submitted by the applicant, the Plans shall be deemed approved. At any time that the Architectural Review Committee consists of more than one individual, decisions of the Architectural Review Committee shall be by majority vote of its members present (in person or by proxy) at a duly called meeting thereof (or by the written consent of a majority of all the members of the Architectural Review Committee). The written response of the Architectural Review Committee may be an approval, a denial of approval, a conditional approval, or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was incomplete or inadequate, and the sixty (60) day time period for further Architectural Review Committee response shall commence only upon receipt of the requested additional information. If conditional approval is granted, and construction, alteration, addition or placement of the Improvement thereafter commences, the conditions imposed shall become fully a part of the Approved Plans. Any material modification or change in the Approved Plans must again be submitted to the Architectural Review Committee for its review in accordance with the foregoing requirements or such other procedures as adopted by the Architectural Review Committee. If the Plans are approved, or conditional approval is given, at least one set of Approved Plans shall be retained by the Architectural Review Committee and at least one set of Approved Plans shall be returned to the applicant. The Architectural Review Committee shall keep such other records of its activities as it is instructed to keep by either the Declarant or the Board, whichever is applicable.

(b) The Declarant or the Board, as applicable, may from time to time adopt procedures for the Architectural Review Committee to conduct the architectural reviews and its other duties, provided that such procedures do not

conflict with the specific requirements of the Declaration. Such procedures may include reasonable fees for processing requests for approval, and also may include fees for the services of an architect or other consultant to assist the Architectural Review Committee in its review of any Plans, the costs of all such fees being the responsibility of the applicant. Processing fees shall be due and payable to the Association at the time the Plans are submitted to the Architectural Review Committee, and the fees of the architect or consultant shall be due and payable to the Association either at the time the Plans are submitted to it or immediately upon its receipt of an invoice therefor, as determined by the Architectural Review Committee from time to time. Prior to incurring any architect or consultant fees not due and payable at the time Plans are submitted, the Architectural Review Committee shall afford the applicant a reasonable opportunity either to agree to pay such fees or to withdraw the request for approval. The sixty (60) day time period within which the Architectural Review Committee is required to respond to a request for approval does not commence until all processing fees and architect or consultant fees due and payable at the time of submission of the request for approval have been paid. Notwithstanding anything to the contrary in this Article, in no event shall approval of Plans by the Architectural Review Committee be deemed to have been given until all such processing fees and architect or consultant fees have been paid by the applicant. The payment of such fees and costs, as well as other expenses of the Architectural Review Committee required to be paid, is deemed to be an individual assessment, enforceable against any applicant in the same manner provided herein for enforcement of other assessments.

(c) As authorized by the Declarant during the Development Period and, thereafter, by the Board, the Architectural Review Committee at any time and from time to time may establish, amend, revise and/or delete architectural guidelines for one or more types of Improvements to be constructed, altered, added or placed on any portion of the Properties, which architectural guidelines shall not conflict with the specific terms of the Declaration or any applicable Supplemental Declaration, shall be fair and reasonable, and shall carry forward the spirit and intention of the Declaration. With respect to Improvements other than initial construction of a Dwelling, the architectural guidelines may, but shall not be required to, allow construction, alteration, addition or placement of one or more types of Improvements in accordance with the architectural guidelines without submitting the Plans therefor to the Architectural Review Committee and going through the formal approval process provided for herein. Although the Architectural Review Committee shall not have unbridled discretion with respect to taste, design and the standards specified herein or in such architectural guidelines, the Architectural Review Committee shall have broad discretion in establishing architectural guidelines and in considering and approving technological advances or general changes in architectural designs and materials in future years, and shall use its best efforts to balance the equities between matters of taste and design and the use of private property.

(d) The Declarant or the Board, as applicable, in its sole discretion, may at any time and from time to time appoint two separate Architectural Review Committees, one for the purpose of reviewing Plans for initial Improvements, and the other to review Plans for subsequent new Improvements and alterations or additions to existing Improvements, the specific division of authority between such Architectural Review Committees to be as specified by the Declarant or Board, as applicable. Each such Architectural Review Committee separately shall be subject to and shall comply with the provisions of the Declaration applicable to the Architectural Review Committee, including the appointment, removal and replacement of its members and the review of Plans by the Architectural Review Committee.

(e) Approval by the Architectural Review Committee of any Plans shall not relieve the applicant from any obligation to obtain all required City approvals and permits, and shall not relieve the applicant of the obligation and responsibility to comply with all Legal Requirements with respect to such Improvements.

(f) Approval of any particular Plans does not waive the right of the Architectural Review Committee to disapprove the same or substantially similar Plans subsequently submitted, nor does such approval relieve an applicant of the requirement to resubmit such Plans for approval in connection with any portion of the Properties other than the portion for which the Plans were approved.

(g) Notwithstanding anything to the contrary herein, architectural approvals given by the Architectural Review Committee prior to the end of the Development Period shall remain in effect following the end of the Development Period. Approved Plans may not be revoked or withdrawn by the Architectural Review Committee without the written consent of the Person who owns the portion of the Properties to which the Approved Plans are applicable.

(h) The Architectural Review Committee shall have the right, but not the obligation, to inspect Improvements that are being constructed or installed on any portion of the Properties to monitor compliance with the provisions of this Article and compliance with the Approved Plans for such Improvements, such right to include entry onto such portion of the Properties at reasonable times to inspect the Improvements. Provided, however, no member of the Architectural Review Committee shall have the right to enter a Dwelling without the consent of an Owner or occupant of such Dwelling.

(i) With the exception of decisions rendered by an Architectural Review Committee consisting solely of the Declarant, an applicant Owner who disagrees with a decision of the Architectural Review Committee may appeal the decision to the Board by giving written notice of appeal within fifteen (15) days following receipt of notice of disapproval. The Board then shall review the Plans and any additional information requested by the Board, and shall give the applicant Owner and the Architectural Review Committee a reasonable opportunity, at one or more meetings of the Board, to present evidence and arguments as to why the decision should be affirmed or overruled. Following the last such meeting the Board, by majority vote, either shall affirm or overrule, in whole or in part, the decision of the Architectural Review Committee, and shall notify the Architectural Review Committee and the applicant Owner of its decision within thirty (30) days following its decision.

Section 4. Completion of Construction. Construction of single-family detached Dwellings on Lots shall be completed not later than twelve (12) months immediately after construction is commenced, or by such later date as specified in the Approved Plans, and construction of single-attached Dwellings (e.g., townhomes) on Lots and multi-family Dwellings, on Development Parcels shall be completed not later than eighteen (18) months immediately after construction is commenced of the building in which such Dwellings are located, or by such later date as specified in the Approved Plans. For the purposes of this Section, construction is "commenced" when a building permit for the construction has been issued by the City, and construction is "completed" when the City has issued a certificate of occupancy or completion for the Improvement. The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time period for completion of construction, and, when requested and upon reasonable evidence of the existence thereof, shall grant reasonable waivers or extensions for events of Force Majeure that delay or prevent a Person from completing construction within the foregoing time

periods. For such purposes, events of "Force Majeure" are any one or more of the following: acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, terrorism, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction, inability to obtain materials or supplies after the exercise of all reasonable efforts, substantial interference in construction activities resulting from construction activities conducted simultaneously on adjacent lands by or under the direction of unrelated parties, and any other similar circumstances beyond the reasonable control of the Person responsible for completion of construction.

Section 5. Compensation. No member of the Architectural Review Committee shall be compensated for service on the Architectural Review Committee. However, the Association may reimburse members of the Architectural Review Committee for reasonable out-of-pocket expenses incurred in performing such services.

Section 6. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof, nor Declarant, nor the Association, nor any partners, members, managers, shareholders, officers, directors, employees or agents of Declarant or the Association, shall be liable in damages or otherwise to any Person by reason of: (i) mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of Plans, or the failure to approve or disapprove, any Plans, except where the foregoing results from gross negligence or willful misconduct; or (ii) any failure of Approved Plans to comply with any Legal Requirements, including zoning and building codes; or (iii) any defect in any Improvements constructed on any portion of the Properties.

Section 7. Violation; Enforcement. Each failure of an Owner or any other Person to construct or alter any Improvement in accordance with the Approved Plans as required herein therefor shall be a violation of the Declaration. Declarant, each Owner and the Association each shall have the right, but not the obligation, to enforce the provisions of this Section against an Owner or any other Person who violates or attempts to violate same, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure to enforce this Section of the Declaration or seek any applicable remedy with respect to any specific violation hereof shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Section of the Declaration at any other time with respect to the same or substantially similar matter. All such rights, remedies and privileges granted in this Section are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

ARTICLE XI RECREATIONAL AMENITIES

Section 1. Use of Recreational Amenities. Subject to the rights of Declarant and Builders to use the Recreational Amenities reserved in this Declaration, use of the Recreational Amenities shall be subject to the rules and regulations established by the Association, and any use of the Recreational Amenities in violation of those rules and regulations shall be deemed a trespass and shall subject the Person who violates same to all of the penalties for violation established by the Association or this Declaration. The Board, at any time and from time to time, when

it determines that is in the best interests of the Association or the Members of the Association, may establish memberships or other use rights for Recreational Users in the Recreational Amenities, such membership or other use rights to be upon such terms, and for payment of such fees or charges, as the Board, in the exercise of its reasonable discretion, may determine.

Section 2. Management. The Association shall have the right and authority, at any time and from time to time, to employ a management company or other Person to manage and operate the Recreational Amenities for the Association.

Section 3. Risks Associated With Use. Developer hereby informs all Lot Owners, and their family members, guests and invitees, together with all Recreational Users and any other Persons who from time to time use the Recreational Facility (whether such use is or is not authorized by the Declaration), that there exist certain hazards or risks associated with use of the Recreational Amenities, particularly with use of the swimming pool, whether or not a lifeguard is on duty during times when the swimming pool is open for use. The Association may, but shall not be required to, employ or provide for the services of one or more lifeguards during times that the swimming pool is open for use, it being within the sole discretion of the Board whether or not to employ or provide for the services of lifeguards. Each Lot Owner, by acceptance of a deed to such Owner's Lot, and each Person who at any time or from time to time uses any part or all of the Recreational Amenities, specifically acknowledges the existence and acceptance of the foregoing risks, and agrees to comply with the rules and regulations established by the Association for use of the Recreational Amenities.

Section 4. Limitation of Liability. Neither the Developer nor any of its partners, shareholders, officers, directors, members, managers, employees, agents, affiliates, subsidiaries, predecessors or successors (for the purposes of this Section, referred to as a "Named Person") shall be responsible or liable in any way to any Owner or to any other Person for any claims, causes of action, damages, judgments, liens, losses, injuries, demands, interference, liabilities, or obligations whatsoever, that may result from property damage or personal injury in connection with such Owner or other Person's use of any Recreational Amenities, unless the same arises out of or results from the gross negligence or intentional act or omission of such Named Person, or unless the same arises out of or results from the act or omission of any such named Person while actually using the Recreational Amenities.

ARTICLE XII EASEMENTS

Section 1. Easements Reserved by Declarant. Declarant, for itself, and its successors and assigns (which may include the Association, Sub-Associations, the City and public utility providers), reserves the following easements and rights in, over, under, across and through the Properties, which may be exercised by Declarant or its successors or assigns in its sole discretion, without any obligation to exercise any of same. These easements specifically include the right of access to and from each part of the Properties subject to the easement (the "easement area"), the right to maintain equipment, structures, facilities and soil and water impoundments therein, during the Development Period the right (without obligation) to exercise all of the easements reserved for the Association in this Article, and the right to remove any obstruction within the easement area that, in the sole discretion of Declarant

or its successors or assigns, constitutes interference with the use of the easement or with the maintenance of any equipment or structures or facilities or soil or water impoundments located therein:

(a) Perpetual, non-exclusive and alienable easements for completion of any development obligation of Declarant under Legal Requirements or pursuant to any contract between Declarant and another Person, and for the maintenance of streets (both publicly dedicated and private streets) utilities and related appurtenances and equipment (including wires, poles, pipes, transformer boxes and conduits), storm water management equipment and facilities, and soil and water impoundments over, under and across all of the following: (i) portions of the Properties identified as easements on plats or in documents that have been executed by the then Owner of such portions of the Properties and recorded in the Registry; (ii) all streets in the Properties, including both publicly dedicated and private streets; (iii) an area on each Lot and Development Parcel that is five (5) feet in width and adjacent to each boundary line of such Lot and Development Parcel; and (iv) the Common Property, including Common Property Easements. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in the Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such street, utility, equipment, facility, structure or soil or water impoundment. Declarant's rights under this Section include the right at any time and from time to time to assign its rights under the easements and/or to grant easements to other Persons in, over, under, across and through those portions of the Properties described in items nos. (i), (ii), (iii) and (iv) in this sub-section.

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

(c) During the Development Period, for itself and Builders, the right to use the Recreational Amenities at reasonable times, without any charge or payment therefor, for any one or more of the following purposes: (i) the clubhouse, if any, for meetings with Owners, prospective Owners and Builders in connection with the development or sale of portions of the Properties and for meetings of the Association, the Board and Association committees; provided, however, the clubhouse shall not be used by Declarant or any Builder as an administrative or sales office; (ii) to the extent that it does not unreasonably interfere with use of the Recreational Amenities by Class A Members, the Recreational Amenities may be used from time to time by Declarant or Builders for promotional functions in connection with the marketing or sale of any part of the Properties. The foregoing rights include the right to use a reasonable number of parking spaces on the Recreational Amenities and any other Common Property parking areas.

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

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(a) A perpetual, non-exclusive and alienable easement over and upon all portions of the Properties to enable the Association to perform its functions and provide the services under the Declaration. Provided, however that any such entry by the Association upon any portion of the Properties shall be made with as minimum inconvenience to the Owner of such portion of the Properties as reasonably practicable, this easement does not include a right to enter any Dwelling or other building on a Parcel without the consent of an Owner of that portion of the Properties, and any damage caused by or resulting from the gross negligence or willful misconduct of the Association's employees, contractors or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate soil erosion controls and/or storm water management, a perpetual, non-exclusive easement to enter upon any portion of the Properties, before and after Improvements have been constructed or placed thereon, to maintain or cause to be maintained soil erosion control and/or storm water management; provided, however, the Association shall not at any time be required to exercise this easement, and no exercise of the easement shall interfere with any permanent Improvements constructed on any such portion of the Properties (which Improvements have been approved by the Architectural Review Committee as required herein). If the need for storm water management or soil erosion controls results from the construction of Improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties, the cost of any such work performed by the Association for the purpose of implementing effective and adequate storm water management or soil erosion control shall be assessed against the Owner of such the portion of the Properties on which such work has been performed, and shall be a lien and be enforceable in the same manner as assessments. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of the Properties, prior to exercising this easement the Association shall give the Owner of such portion of the Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If such Owner fails to complete the corrective action by the date specified in the notice, the Association then may exercise this easement.

(c) The Association has the right at any time and from time to time to assign its rights under its easements as it deems reasonable in the best interests of the Subdivision.

Section 3. Easement Reserved for the City and Public Utilities. Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for the City and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purpose of setting, removing and reading utility meters, maintaining utility or storm water management equipment, facilities and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. This easement does not include a right to enter any Dwelling or other building on any portion of the Properties without the consent of the Owner of such portion of the Properties. Any pedestrian access easement established by Declarant or the Association over any portion of the Properties for the purpose of providing pedestrian access to and from City greenways or City greenway easements are established for the benefit of the Town of Cary, its employees and the public in general, and the Association has the responsibility with respect to such pedestrian access easements that Legal Requirements of the Code impose on owners of properties over which such pedestrian access easements are located and on property owner associations that serve properties over which such pedestrian access easements are located.

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

Section 5. Easement for Encroachments. If, in accordance with Approved Plans, any Dwelling is closer than five (5) feet to any boundary line of the Parcel on which that Dwelling is located (for the purposes of this Section, the "subject Parcel"), then the Owner of the Dwelling, and such Owner's tenants and contractors, shall have a perpetual, non-exclusive access easement over the adjoining Parcel or other portion of the Properties as reasonably necessary from time to time to facilitate maintenance of the Dwelling on the subject Parcel. Provided, however, this easement is not applicable to Dwellings that adjoin each other and are connected by common or "party" walls. All such maintenance shall be done expeditiously and the exercise of this easement shall in all respects be reasonable and, upon completion of the maintenance, the Owner of the subject Parcel shall restore the other Parcel or portion of the Properties on which the easement has been exercised to substantially the same or better condition as it was in prior to the maintenance as reasonably practicable. When the foregoing easement exists, no fence, wall, storage shed, or similar structure or any other kind of obstruction to the exercise of the easement shall be permitted on the adjoining Parcel or other portion of the Properties (as a guideline, the area on the adjoining Parcel or other portion of the Properties within five (5) feet of the common boundary line of the adjoining Parcel or other portion of the Properties and the subject Parcel shall be left free of all such obstructions). Provided, however, the easement established by this Section shall not restrict or impair any other easements established herein in favor of the Declarant, the Association, an Owner or any public utility provider.

Section 6. Restriction on Easements. Notwithstanding anything to the contrary contained in this Article, except for the right of an affected Owner to repair a party wall, no easement granted, reserved or established in the Declaration shall be construed to give Declarant, the Association, an Owner, the City or any other Person the right to enter any Dwelling or other building located on any Parcel.

ARTICLE XIII

OWNER AND SUB-ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 1. Duty to Maintain. Subject to any other applicable terms of the Declaration, each Owner, at such Owner's sole cost and expense, and each Sub-Association, at such Sub-Association's sole cost and expense, shall maintain such Owner's Parcel, or such Sub-Association's Sub-Association Common Property, as the case may be, including all Improvements thereon, in a safe, clean and attractive condition at all times, including all of the following:

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

(b) Lawn mowing and maintenance on a regular basis, including, subject to any Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such portion of the Properties and not maintained by the Association or the City.

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

(d) Maintenance of flower and plant gardens.

(e) Maintenance of exterior lighting and mechanical facilities.

(f) Maintenance of parking areas and driveways.

(g) Complying with all Legal Requirements.

(h) Soil erosion control as required by the Declaration.

(i) Maintenance of storm water drainage easements and portions of the Properties served by storm water drainage easements, as required by the Declaration.

The foregoing responsibilities shall be performed in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment of the Properties by Persons entitled thereto. Provided, however, and notwithstanding anything to the contrary appearing herein, Declarant is exempt from the provisions of this Section with respect to all portions of the Properties it owns, except for any of same on which Dwellings are located.

Section 2. Enforcement. If any Owner or Sub-Association fails to perform any of the foregoing maintenance Responsibilities, then the Association may give such Person written notice of the failure and such Person must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Person fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Person's portion of the Properties and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Person shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Person an invoice therefor. If any Owner or Sub-Association fails to reimburse the Association as required, the Association shall have the same rights and remedies against such Owner or Sub-Association and such Owner's or Sub-Association's portion of the Properties, as the Association has with respect to the enforcement and collection of assessments.

Section 3. Unimproved Portions of the Properties. Notwithstanding the foregoing provisions of this Article, but subject to the other applicable provisions of the Declaration, Owners of unimproved Lots or other portions of the Properties shall be required to maintain same only in accordance with such maintenance standards, if any, as are established by the Declarant, during the Development Period, and thereafter, in accordance with such reasonable maintenance standards established by the Board.

ARTICLE XIV
INSTITUTIONAL LENDERS; MORTGAGEES

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

Section 2. Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the rights afforded Institutional Lenders under the Declaration and receive notices from the Association, it shall furnish written notice thereof to the Association by certified or registered mail, or by overnight delivery service, identifying the Lot upon which such Institutional Lender holds a first lien mortgage or deed of trust, specifying which rights it wishes to exercise and notices or other information it wishes to receive, and designating the name of the person and mailing address to which notices, reports or information are to be sent by the Association. The Institutional Lender shall be responsible for updating the information required by this Section. Such notice shall be deemed to have been received by the Association only upon actual delivery thereof, as evidenced by the return registry receipt or records of the overnight delivery service.

Upon payment in full of the indebtedness secured by the lien of the mortgage subject to the notice given to the Association by the Institutional Lender, the Institutional Lender promptly shall notify the Association that it no longer wishes to exercise the rights requested in the previously given written notice, such new notice to be given in the same manner as the previously given notice.

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

- (a) To inspect Association documents and records on the same terms as the Members of the Association.
- (b) To receive a financial statement of the Association for the immediately preceding fiscal year of the Association
- (c) To be notified of any proposed amendments to the Declaration and any meetings of the Association at which such proposed amendments are to be voted on.
- (d) To be notified of any proposed action of the Association that requires the consent of a specified percentage of Institutional Lenders.
- (e) To be notified of any condemnation or casualty loss affecting either a material portion of the Properties or the Lot securing its Mortgage.

(f) To be notified of any event giving rise to a claim under the Association's physical damage insurance policy insuring the Common Property, where the damage to the improvements on the Common Property exceeds an amount equal to ten percent (10%) of the Association's annual budget for Common Expenses.

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

(h) With respect to the Lot that secures its Mortgage, to be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of the Declaration by the Owner of such Lot. Provided, however, any failure of the Association to notify the Institutional Lender of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's Lot.

(i) Following the end of the Declarant Control Period, the right of a majority of all the Institutional Lenders (including those who have notified and who have not notified the Association) to demand professional management of the Association.

(j) Following the end of the Declarant Control Period, the right of a majority of all the Institutional Lenders (including those who have notified and who have not notified the Association) to demand an audit of the Association's financial records, not to exceed one audit per calendar year.

Section 4. Institutional Lenders Not Obligated to Collect Assessments. No Institutional Lender shall have any obligation to collect any assessment under the Declaration.

ARTICLE XV AMENDMENT OF DECLARATION

Section 1. Amendment by Declarant. During the Development Period Declarant may, without the approval or joinder of the Association, or any Member of the Association, Mortgagee or Secondary Mortgage Market Agency, amend any provision of the Declaration or any Subdivisions Declaration or Supplemental Declaration from time to time to: (i) make non-material, clarifying or corrective changes not materially, adversely affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA, VA, FNMA, OILSR, or other governmental agency Secondary Mortgage Market Agency or Institutional Lender; or (iii) establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina. Any such amendment shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein. Provided, however, during the Development Period any such amendment of the Declaration also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such amendment, applicable FHA or VA regulations require such approval.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 of this Article, the Declaration may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Declaration may be amended only by (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period, with the written consent of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting.

(c) When any amendment to the Declaration is approved by Members of the Association (and Declarant, when applicable) as provided in this Section, the appropriate officers of the Association (and Declarant, when applicable) shall execute in the same manner as a deed and record in the Registry, a document setting forth the amendment, the effective date of the amendment (if no effective date is stated the amendment shall be effective upon the recording of same in the Registry), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting, the total number of votes present at such meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. The document shall be recorded in the Registry within thirty (30) days following the date of the meeting at which the amendment was adopted. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to the Declaration duly adopted by the Members of the Association shall be void or invalid solely because the document describing the amendment is not recorded in the Registry within said thirty (30) day period, and any such duly adopted amendment to the Declaration recorded following the end of said thirty (30) day period shall become effective on the later of the effective date specified therein, if any, or on the date it is recorded in the Registry.

(d) Amendment of Subdivision Declarations and Supplemental Declarations shall be governed by the provisions for amendment contained therein, if any; otherwise, the provisions regarding amendment of the Declaration shall apply.

(e) In addition to the foregoing requirements, during the Declarant Control Period any such amendment to the Declaration also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such amendment, applicable FHA or VA regulations require such approval.

Section 3. Prohibited Effects of Amendment. No amendment to the Declaration shall do or result in any of the following:

(a) increase the financial obligations of an Owner in a discriminatory manner.

(b) further restrict development on any portion of the Properties in a discriminatory manner.

(c) diminish or impair the rights of Declarant without the written consent of Declarant.

(d) impose additional obligations upon Declarant without the written consent of Declarant.

(e) diminish or impair the express rights of the Institutional Lenders under the Declaration without the prior written approval of a majority of the Institutional Lenders who have requested the exercise of such rights as provided herein. Except as specifically provided in the Declaration or Legal Requirements, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Institutional Lenders.

(f) terminate or revise any easement established by the Declaration, without the written consent of the Person benefitted by the easement or by the Owner of the portion of the Properties benefitted by the easement, whichever is applicable.

(g) alter or remove any applicable Legal Requirement.

ARTICLE XVI DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

Section 1. Duration. Unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Properties and each Owner, and shall inure to the benefit of the Association, and each other Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, as follows: (i) during the Declarant Control Period, executed or ratified by Declarant and by those Members to whom eighty percent (80%) or more of the Class A votes in the Association are allocated; and (ii) following the end of the Declarant Control Period, executed or ratified by those Members to whom eighty percent (80%) or more of the total votes in the Association are allocated. Execution or ratification by any one of multiple Owners of a Parcel is sufficient for that Parcel unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Parcel files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Parcel shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Properties is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Property authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Property, but the

contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Property shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Property is not to be sold following termination of the Declaration, title to the Common Property vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement.

Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, section 47F-2-118 of the Act, or any successor section of the Act), any portion of the Common Property not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the Town of Cary, North Carolina (or, if the Town of Cary refuses such offer, then to some other appropriate governmental entity or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If the Town of Cary or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the Town of Cary or such other appropriate governmental entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Parcel and the public or private street(s) on which that Parcel is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

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

Section 3. Termination or Dissolution During Declarant Control Period.

In addition to the foregoing requirements, during the Declarant Control Period any termination of the Declaration or dissolution of the Association also shall require approval by the FHA or its designee and/or by the VA or its designee unless, at the time of such termination or dissolution, applicable FHA or VA regulations no longer require such approval.

ARTICLE XVII
THE RESERVE SUBDIVISION

Portions of Highcroft P.U.D. adjoin property located in a subdivision known as "The Reserve". As part of obtaining approval from the Town for Highcroft P.U.D., Impact Properties Group, LLC executed an agreement dated March 4, 2002 with the homeowners association for The Reserve and with certain persons whose properties in The Reserve adjoin portions of Highcroft P.U.D., referred to in this Article as the "Agreement". The terms of the Agreement substantially are set forth in this Article, and these terms are binding on the Declarant, Builders and all other Owners of the Properties and, notwithstanding anything to the contrary herein, may not be altered by any amendment to this Declaration or by any Supplemental Declaration or Subdivision Declaration. To assist in understanding the Agreement, a copy of it is attached hereto as **Exhibit C**, and the most recent conceptual master plan drawing for Highcroft P.U.D. approved by the Town of Cary is attached hereto as **Exhibit D**, both of which are incorporated by reference. This drawing shows the approximate locations, subject to final survey, of the various "SF" sections of Highcroft P.U.D. The Agreement may be enforced by the homeowners association for The Reserve and/or by any owner of property in The Reserve that adjoins a boundary of Highcroft P.U.D. An original of the executed Agreement is filed in the records of the Town's Highcroft P.U.D. approval and controls over any contrary term or provision that may be contained herein. The Agreement requires the following:

1. Clear cutting of the existing SF-3 wooded lots is prohibited by the Declarant or other developer of Highcroft P.U.D.. Each Builder will be required to obtain Declarant approval prior to the start of construction in SF-3. The expected clearing limits used would be to remove any trees within 15' of the sides of the foundation, 20' in the front and 30' in the rear unless said limits encroach into buffers or deed restricted areas. The main intent would be to accommodate the future house, driveway, provide an adequate backyard, and provide proper drainage. Clearing additional trees would be discouraged in the architectural review process and would only reduce the market value of the finished home.

2. Allowable uses within the SF-3 portion of Highcroft P.U.D. shall be limited to 110 single-family, detached residential homes, and subject to the following additional conditions:

(a) 90% of the lots in SF-3 shall be larger than 12,000 square feet; and

(b) Minimum square footage of dwelling units in SF-3 (finished and heated, excluding garages) shall be 2,700 square feet.

3. Minimum square footage of dwelling units (finished and heated, excluding garages) in SF-2 shall be 2,700 square feet. Minimum square footage of dwelling units in SF-1 and SF-4 (finished and heated, excluding garages) shall be 2,000 square feet.

4. A Common Open Space (COS) area (which Declarant anticipates will be owned and maintained by the Association as part of the Common Property under the Declaration) will be cleaned up (dead plant material removed) and established along the eastern boundary of the SF-3 parcel between the Highcroft P.U.D. and existing lots in The Reserve. This COS will be installed prior to any disturbance of the SF-3 parcel and is subject to the following:

(f:\keagle\highcroft\dec5)

(a) A variable width buffer strip, as shown on the survey by Kenneth Close, Inc. entitled "Additional Buffer Area For Highcroft P.U.D.", dated 3-4-02 and attached hereto as **Exhibit E** and incorporated by reference, shall be established and maintained along the eastern boundary of SF-3. This COS buffer is approximately 20' wide North of Briardale Avenue and 35' wide South of Briardale Avenue. A triangular section has been added to the 35' strip to save additional trees.

(b) Except to the extent reasonably necessary to clean-up and remove dead or diseased plant material or to prevent personal injury or damage to dwellings in Highcroft P.U.D. or in The Reserve, this buffer strip shall remain undisturbed and have evergreen plant material planted and maintained along its western side. When installed, this plant material will be a minimum of 5 feet tall and placed at a maximum of 10 foot intervals.

(c) During road construction a tree protection fence will be installed a minimum of 50 feet from "The Reserve" property line and a minimum of 10 feet from the COS buffer.

5. SF-3 parcel lots abutting existing single-family lots of The Reserve shall have the following restrictions:

(a) All such lots shall have a minimum lot size of 12,000 square feet.

(b) Minimum dwelling size on such lots (finished & heated, exclusive of garages) shall be 3,000 square feet.

(c) Building set-back distances (as defined by Town of Cary Code) will be a minimum of 80 feet from The Reserve property line.

(d) The maximum front setback distance (as defined by Town of Cary Code) shall be 35'.

(e) An undisturbed, protected area will be established for all land within 50' of The Reserve property line if such land is not already contained within the Common Open Space (COS) buffer area referenced above. Tree clearing is prohibited on the portions of the Properties subject to this protected area provision, except to the extent reasonably necessary to remove dead or diseased trees or to prevent personal injury or damage to dwellings in Highcroft P.U.D. or in The Reserve. It is intended by Declarant that the foregoing provisions prohibiting tree clearing constitute the deed restrictions to prevent tree clearing on the lots bordering The Reserve as required by the Agreement.

6. The proposed Highcroft P.U.D. SF-3 subdivision will be subject to substantially similar covenants (land use restrictions, appearance and architectural restrictions) as the restrictive covenants applicable to The Reserve (it is Declarant's intent that the Declaration and any applicable Supplemental Declaration or Subdivision Declaration constitute the documents that comply with this portion of the Agreement). In compliance with the Agreement, the Declaration has been written subject to the review and approval of attorney Harold E. Russell, Jr.

7. To decrease the impact of the associated problems, if allowed by the Town of Cary Declarant will not make the connection of any street in SF-3 to Briardale Avenue until Phase 2 of the Highcroft P.U.D. infrastructure is constructed. The Agreement anticipates this will delay the Briardale Avenue construction for approximately one (1) year and give construction traffic for Highcroft P.U.D. a significant period to establish and get used to using

Sears Farm Road as a new route. Following construction of such street connection with Briardale Avenue, Declarant will have a barricade installed across Briardale Avenue to be left in place as long as the Town will allow it.

To further ease the traffic concerns Declarant will pay, within a reasonably period of time after approval of Highcroft P.U.D. by the Town of Cary, any contributions required by the Town from the property owners and/or property owners association in The Reserve toward the construction of the speed humps on Edgemore & Briardale Avenues. Should the Town of Cary not have sufficient funds available in its budget within two years of such approval, the Declarant agrees to pay the City's portion of the costs to install speed humps on both Briardale and Edgemore Avenues.

8. All improvements to Sears Farm Road, Green Hope School Road, and NC Highway 55 required in connection with Highcroft P.U.D. will be constructed in conjunction with Phase I of Highcroft P.U.D.

9. No Highcroft P.U.D. construction traffic will utilize the roads within The Reserve. A mutually agreed upon implementation plan will be developed to achieve this, and modified as necessary. Declarant will work with the Builders and Declarant's and Builders' subcontractors to assure that Highcroft P.U.D. construction traffic does not use streets in The Reserve as a cut through.

10. The MR-1 tract of proposed town homes has been changed to SF-4, a continuation of the cluster lots in SF-1. Declarant estimates that the beginning price points in Highcroft P.U.D. will start between \$275,000 - \$375,000.00 for cluster homes in SF-1 and SF-4 and at \$375,000.00 and up for dwellings in SF-3.

11. The parties stipulate and agree that any breach of the Agreement will necessarily cause irreparable harm and damage to the non-breaching party for which there is not an adequate remedy at law and, therefore, that the non-breaching party shall be entitled, without limiting its remedies, to injunctive relief in the event of a breach of the Agreement. The parties further stipulate and agree that should a party to the Agreement prevail in any litigation arising out or relating to any breach or alleged breach of the Agreement, such prevailing party shall be entitled to recover, without limitation its reasonable attorney's fees. The Agreement shall inure to the benefit of the owners of the real property affected by the Agreement, as described above, and their respective successors and assigns, including each and every person, firm or corporation acquiring any right, title or interest in any of the real property affected by the Agreement.

12. Impact Properties Group, LLC will comply with the terms of the Agreement and this Article by one of the following means (a different means may be used for different provisions):

- (a) Inclusion of the provision in the P.U.D. provisions on file with the Town of Cary.
- (b) Inclusion in the restrictive covenants for the applicable phase or section of Highcroft P.U.D. with appropriate delineation on the recorded plat for such phase or section.
- (c) Inclusion in written binding contractual agreements with engineers, surveyors, builders and realtors.

13. The provisions of this Article are binding on Impact Properties Group, LLC and its successors and assigns and on any and all Declarants under the Declaration.

ARTICLE XVIII MISCELLANEOUS REQUIREMENTS

Section 1. Applicability. Certain provisions of the Code apply to part or all of the Properties. The Declaration is subject to and shall be construed in accordance with all applicable provisions of the Code and other Legal Requirements, including all sections thereof previously described or referenced herein, and including all other applicable sections not referenced. It shall be the responsibility of each Owner of any portion of the Properties subject to any provisions of the Code and other Legal Requirements to comply with all provisions thereof applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of the Declaration has been given by the Declarant, the Board or the Architectural Review Committee with respect to such portion of the Properties.

Section 2. Party Walls. Unless otherwise required or governed by Legal Requirements, all common party walls between Dwellings shall conform to the requirements of the North Carolina State Building Code. In the absence of Legal Requirements to the contrary, or provisions in a declaration or other document specific to a particular phase or section of the Properties containing Dwellings with party walls, the following rules with respect to party walls in the Properties shall apply:

(a) Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Dwellings shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section of the Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto;

(b) The cost of reasonable maintenance of a party wall shall be shared by the Owners of the Dwellings that use the party wall, in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may restore or repair it, and if the other Owners thereafter use the party wall they promptly shall contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner who by such Owner's negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to such Owner's Dwelling and shall pass to such Owner's successors in title of the Dwelling.

(f) If any Owner desires to sell a Dwelling that shares a party wall with any other Dwelling, the Owner who desires to sell may request each other Owner of a Dwelling that shares that party wall to provide a certificate stating whether or not such Owner has any right of contribution with respect to such party wall against the Owner who desires to sell. Each Owner from whom such certificate is requested shall furnish same promptly to the requesting Owner, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of an adjoining Dwelling shall be conclusive evidence of its contents with respect to all other Owners of that Dwelling and with respect to third parties.

(g) Each Owner of a Dwelling that shares a party wall with one or more other Dwellings shall have an easement and right of entry upon such other Dwelling to the extent reasonably necessary to repair, restore, maintain or reconstruct the party wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining Dwellings damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

Section 3. Private Streets. Unless otherwise provided by the Code:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any portion of the Properties when such failure is due to lack of access to such areas over a private street or private access easement resulting from inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association or a Sub-Association; and

(b) In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association, Sub-Association or Owner, as applicable, as such private streets and private access easements may not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

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

Section 4. City Greenways. Notwithstanding any other provision of the Declaration, unless allowed by the Code, without the prior written consent of the Town of Cary the Association, Owners, Members, tenants of Members and their respective families, guests and invitees, shall not, within any Town of Cary owned greenway in or adjoining the Properties or within any Town of Cary greenway easement in or adjoining the Properties:

- (a) grant any easement of any nature whatsoever;
- (b) remove any tree or vegetation, except as may be necessary to prevent injury to person or property;
- (c) erect any gate, fence or other structure or improvement;
- (d) place any garbage receptacle;
- (e) fill or excavate;

(f) plant vegetation of any type or otherwise restrict or interfere with the use, maintenance and preservation of the greenway in its natural or improved state, including, without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that, within any such greenway, the Town of Cary may erect trails and trail markers, place or erect litter receptacles and other convenience facilities, and adopt and amend regulations concerning the use of the greenway (including, without limitation, hours of operation and use), which rules and regulations shall be equally applicable to the general public and the Owners. The Association and the Owners may adopt such other regulations governing the use of the greenway not inconsistent with those adopted by the Town of Cary and may enter into such agreements with the Town of Cary as are deemed appropriate to ensure the maintenance and upkeep of the greenway in its natural or improved state, free of litter and unsightly debris.

ARTICLE XIX GENERAL PROVISIONS

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

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent and final jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of the Declaration shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Notice. Except as otherwise provided herein, whenever written notice to an Owner is required hereunder, such notice may be hand delivered to such Owner, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by Legal Requirements, or given in such

other manner determined by the Board to be proper and which does not violate any Legal Requirements, addressed to the address of such Owner appearing on the records of the Association or to the address for such Owner appearing in the records of the Wake County Revenue Department. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) in the absence of any delays in delivery by the United States Postal Service resulting from acts of war or terrorism, on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Owner or an adult residing with the Owner, as evidenced by a receipt signed by the Owner or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national, regional or local same day or overnight courier service, or (v) on the date acknowledged in writing by the recipient Owner or other adult residing with such Owner, or (vi) upon execution of a written waiver of such notice by the Owner. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to an Owner, when addressed to the principal business office of the Association or the property manager employed by the Association. It shall be the duty of each Owner to keep the Association informed of such Owner's current mailing address and telephone number. If an Owner has not provided the Association with the Owner's current mailing address the Association may use as the mailing address the street address of the Parcel owned by such Owner or the address for such Owner in the records of the Wake County Revenue Department. If no address for an Owner is reasonably available to the Association, the Association shall not be required to give notice to such Owner. Notice given to any one of multiple Owners of any portion of the Properties shall be deemed to have been given to all of such Owners.

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

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

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

Section 7. Consent. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, where the consent of the Owner of a Parcel is necessary, and such Parcel is owned by more than one Person, the consent of any one of such Owners is sufficient.

Section 8. Subdivision, Combination of Lots; Plat Re-recording. A Parcel may be subdivided, and the boundaries of a Parcel may be altered, only with the written consent of the Owner thereof and the Declarant, during the Development Period (and, thereafter, the Board), and with any prior approval required of the City. Provided, however, and notwithstanding the foregoing sentence, such written consent of the Declarant is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, the Association, the City or a public utility provider.

One or more Parcels may be combined into a single Parcel with the written consent of the Owner thereof and the Declarant, during the Development Period (and thereafter, the Board). When two or more such Parcels are combined into one Parcel, the resulting Parcel shall continue to be assessed and have voting rights in the Association based on the number of Parcels that existed prior to the combination into one Parcel. When one such Parcel is subdivided into two or more Parcels, the resulting Parcels each shall be considered as a separate Parcel and each shall be subject to assessments and have voting rights in the Association in accordance with the assessments and voting rights then applicable to that particular type of Parcel. When the boundaries of two or more such Parcels are changed but the resulting number of Parcels is the same as the original number of Parcels, the assessments and voting rights in the Association for those resulting Parcels shall continue as they were immediately prior to the change. When two or more such Parcels are combined into one Parcel, the easements reserved by this Declaration around the boundaries of the former Parcels shall continue in effect, except that any such easements reserved along the former common boundary line(s) between the combined parcels and not actually being exercised or used by any Person shall terminate. Provided, however, it shall be the responsibility of the Owner of such resulting Parcel to obtain any documentation that is necessary or required to confirm such termination and to obtain termination or relocation of any such easements that are actually being exercised or used at the time of the combination of Parcels. When a Parcel is subdivided into two or more Parcels, the easements established herein adjacent to the boundaries of a Parcel shall apply to all of the resulting Parcels.

Nothing contained herein shall prohibit or restrict the right of Declarant, during the Development Period to subdivide, combine, re-subdivide or recombine, or to record or re-record maps relating to, any portion of the Properties owned by Declarant, nor to prohibit or restrict the right of Declarant to approve or disapprove such activities with respect to portions of the Properties owned by other Owners. The provisions of the immediately preceding paragraph with respect to the effects of subdivision or combination of Parcels are applicable to subdivision or combination of Parcels owned by the Declarant unless the Declarant otherwise indicates on the plat of such subdivision or combination recorded in the Registry or in an instrument recorded in the Registry contemporaneously with the recording of the plat in the Registry.

Section 9. Changes in Planned Unit Development. The provisions of this Section apply to any part or all of Highcroft P.U.D. that has been approved by the Town of Cary as a planned unit development, as that term is defined in the Code. Therefore, although a Parcel within Highcroft P.U.D. may appear to contain enough land area to permit construction of additional Dwelling Units or to create additional Parcels, prior approved density transfers within the planned unit development may, in fact, preclude City approval of additional Dwelling Units or creation of additional Parcels. During the Development Period, without the written consent of the Declarant (and, if required, by the Town of Cary), no Parcel within Highcroft P.U.D. may be subdivided by sale or otherwise so as to reduce the total land area shown on the recorded plats of Highcroft P.U.D.

With the approval of the Town of Cary, and subject to such terms and conditions as the Town of Cary may impose, during the Development Period Declarant shall have the right, without consent or approval of the Owners, to create additional Dwelling Units or Parcels, add Common Property, and make density transfers among various Parcels.

Section 10. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period,

including contracts with property managers, must be terminable by the Association, with or without cause, and without penalty, upon ninety (90) days written notice to the other parties to the contract or lease.

Section 11. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the provisions of the Declaration and thereafter, any applicable Supplemental Declaration or Subdivision Declaration shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Code. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted by the Association. The Governing Documents shall be construed together and shall be deemed to incorporate one another in full.

Section 12. Assignment. Declarant specifically reserves the right, in Declarant's sole discretion, at any time and from time to time, to temporarily or permanently assign any or all of its rights, privileges and powers under the Declaration or under any Supplemental Declaration or Subdivision Declaration, including assignment of such rights as security for any obligation of Declarant to any Person. All such assignments shall be in writing and shall not be effective until recorded in the Registry or other governmental entity office required under Legal Requirements, and the terms of the recorded assignment shall be conclusive and binding as to the rights assigned. Upon any completed foreclosure sale pursuant to the instrument under which the Declarant rights become security for an obligation, or the recording or filing of a deed or other instrument in lieu of foreclosure, the purchaser at the foreclosure sale, or the grantee under any deed or other instrument in lieu of foreclosure, shall receive the rights that were assigned as security for that obligation.

If Declarant has not assigned all of such rights by the end of the Development Period, such rights then possessed by the Declarant shall be deemed to have been assigned to the Association (and recording of an assignment in the Registry shall not be required).

Section 13. Costs and Reasonable Attorneys' Fees. In any action to enforce the provisions of any Governing Documents, the court may award reasonable attorneys' fees to the prevailing party, even if such action is settled prior to any trial, judgment or appeal. It is the specific intent of this Section that it constitute the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

Section 14. Rule Against Perpetuities. As provided in Section 47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, or the Bylaws, rules, or regulations adopted pursuant to Section 47F-3-102(1) of the Act. In the event of the absence of the protection of Section 47F-2-103(b) of the Act, if any provision of the Declaration violates any applicable Rule Against Perpetuities, such provisions shall be deemed reformed to continue in effect for the maximum period of time that such provision could exist without violating such applicable Rule Against Perpetuities.

Section 15. Reserved Rights. Whenever the Declaration reserves a right for, or requires or authorizes a consent, approval, variance or waiver by, Declarant during the Declarant Control Period or Development Period,

and thereafter confers such right upon, or requires or authorizes such approval or waiver by, the Association or Board, the applicable right may be exercised, or the applicable approval or variance or waiver may be given, only by Declarant (or its assigns, which may include the Board) during the applicable period, and, thereafter, only by the Board or its authorized designee (unless a vote or consent of the Members of the Association also is required or alone is required).

Section 16. Legal Requirements. All Governing Documents shall be subject to and construed in accordance with all Legal Requirements, including all applicable provisions of the Code. It shall be the responsibility of each Owner to comply with all Legal Requirements, whether or not any approval, disapproval, waiver or variance of the terms of any Governing Documents has been given by Declarant, the Association or the Architectural Review Committee. It is the express intention of the Governing Documents to comply with the Act, and any provisions of the Governing Documents that are not in compliance with the Act shall be deemed reformed from time to time to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

Section 17. Marketable Title Act. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other Legal Requirement that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

Section 18. Release of Landscaped Right-of-Way. Once a public or private street right of way has been designated as a Landscaped Right-of-Way as provided for in the Declaration, thereafter it may be terminated as a Landscaped Right-of-Way and the Association released from its obligation to maintain it, as follows:

(a) During the Development Period, by the Declarant by the recording of a Supplemental Declaration terminating the public or private street right of way as a Landscaped Right-of-Way; and

(b) Following the end of the Development Period, by action of the Board.

Section 19. Joinder of Beneficiary and Trustee. Highcroft Investors LLC, a North Carolina limited liability company, and Kenneth L. Eagle, Trustee, join in the execution of the Declaration for the sole purpose of acknowledging and agreeing that the Deed of Trust recorded in the Wake County, North Carolina Registry in Book 10152, Page 594, shall be subordinate to the Declaration only to the extent that, upon any foreclosure of the Deed of Trust or conveyance or deed in lieu of foreclosure, the Declaration shall survive such foreclosure, proceeding or remedy in its entirety and not be extinguished in whole or in part by such foreclosure, proceeding or remedy. Provided, however, the Deed of Trust is not subordinated to the Declaration for any other

purpose, and Highcroft Investors LLC, as the Beneficiary under the Deed of Trust and current holder of the indebtedness and other obligations secured by the lien of the Deed of Trust, specifically reserves the priority of the Deed of Trust over any lien for unpaid assessments and other charges under the Declaration, and specifically reserves all of its rights under the Deed of Trust, including the right to become the Declarant under the Declaration in the event it is the purchaser of the portion of the Properties sold at any foreclosure or conveyed or transferred to Highcroft Investors LLC by deed or other instrument in lieu of foreclosure.

(execution pages follow)

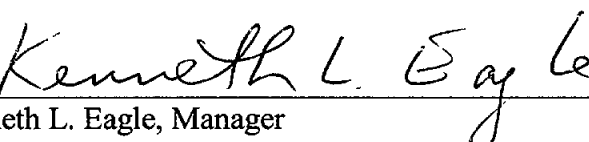
(f:\keagle\highcroft\dec5)

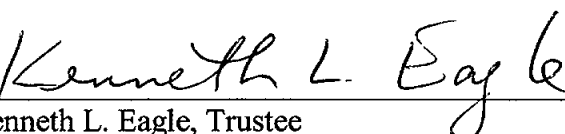
IN WITNESS WHEREOF, Declarant and Highcroft Investors LLC each has caused the Declaration to be executed in legal and binding form, and Kenneth L. Eagle, Trustee, has executed this instrument, all on the dates indicated in the respective acknowledgments of such executions.

IMPACT PROPERTIES GROUP, L.L.C.,
a North Carolina limited liability company

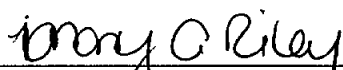
By: 
Colen E. Davidson, Jr., Manager

HIGHCROFT INVESTORS LLC,
a North Carolina limited liability company

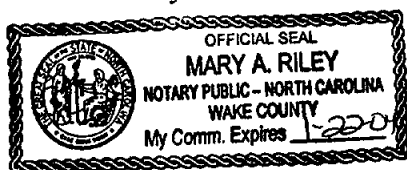
By: 
Kenneth L. Eagle, Manager

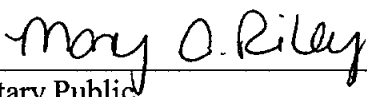

Kenneth L. Eagle, Trustee

State of North Carolina, County of Wake

I, , Notary Public of the County or City and State aforesaid, certify that Colen E. Davidson, Jr., Manager of Impact Properties Group, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is a Manager of said company and that he executed the Declaration on behalf of and as the act of the company by authority duly given.

Witness my hand and official stamp or seal, this 20th day of May, 2003.

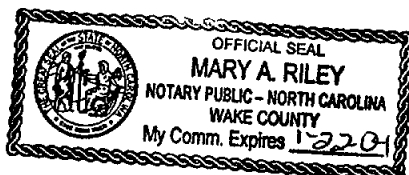



Notary Public
My commission expires: 1-22-04

State of North Carolina, County of Wake

I, Mary A. Riley, Notary Public of the County or City and State aforesaid, certify that Kenneth L. Eagle, Manager of Impact Properties Group, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is a Manager of said company and that he executed the Declaration on behalf of and as the act of the company by authority duly given.

Witness my hand and official stamp or seal, this 28th day of May, 2003.

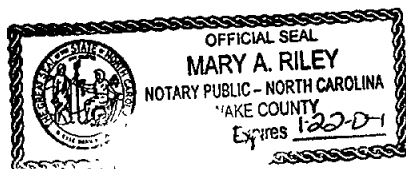


Mary A. Riley
Notary Public
My commission expires: 1-22-04

North Carolina, Wake County

I, Mary A. Riley, a Notary Public of the County and State aforesaid, certify that Kenneth L. Eagle, Trustee, personally appeared before me this day and acknowledged execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 28th day of May, 2003.



Mary A. Riley
Notary Public
My commission expires: 1-22-04

EXHIBIT A
EXISTING PROPERTY

Lying and being in the Town of Cary, White Oak Township, Wake County, North Carolina, in the Highcroft Planned Unit Development, and being more particularly described as follows:

ALL of Tract 1, containing 20.06 acres, more or less, all of Tract 2, containing 12.72 acres, more or less, all of Tract 3, containing 62.08 acres, more or less, and all of Tract 4, containing 17.97 acres, more or less, as shown on a plat by Michael E. Dickerson, Professional Land Surveyor, of Withers & Ravenel, Inc., entitled "HIGHCROFT PUD RECOMBINATION, SUBDIVISION AND R/W REVISIONS, OWNER: HIGHCROFT INVESTORS LLC & WAKE CO. BOARD OF EDUCATION", dated 4/22/03, and recorded in the Wake County, North Carolina Registry in Book of Maps 2003, Pages 684 through 686, reference being made to said plat for a more complete description (and referred to herein as the "Plat").

SAVING AND EXCEPTING from the foregoing described real property the following real property:

BEGINNING at the southeastern corner of Tract 4 as shown on a plat recorded in the Wake County, North Carolina Registry in Book of Maps 2003 Pages 684 through 686, said plat being incorporated by reference as if fully set out herein; thence South 81 degrees 10 minutes 27 seconds West 379.65 feet to a point; thence North 17 degrees 21 minutes 00 seconds West 240.23 feet to a point; thence North 09 degrees 41 minutes 32 seconds West 409.85 feet to a point; thence North 13 degrees 15 minutes 43 seconds West 128.32 feet to a point; thence North 55 degrees 13 minutes 17 seconds East 49.18 feet to a point; thence North 84 degrees 36 minutes 16 seconds East 134.72 feet to a point; thence South 88 degrees 15 minutes 36 seconds East 128.88 feet to a point; thence South 85 degrees 23 minutes 34 seconds East 66.61 feet to a point; thence North 64 degrees 51 minutes 51 seconds East 90.40 feet to a point; thence South 89 degrees 39 minutes 58 seconds East 38.44 feet to a point; thence South 55 degrees 09 minutes 40 seconds East 58.27 feet to a point; thence South 03 degrees 06 minutes 51 seconds East 234.97 feet to a point; thence South 00 degrees 36 minutes 49 seconds West 501.69 feet to the point and place of Beginning, containing 367,191 square feet / 8.43 acres, more or less.

EXHIBIT B
EXHIBIT B PROPERTY

Exhibit B Property consists of any real property that is contiguous to any portion of the Properties.

EXHIBIT C
AGREEMENT WITH THE RESERVE

(f:\keagle\highcroft\dec5)

EXHIBIT C - AGREEMENT WITH THE RESERVE

March 4, 2002

To Whom It May Concern:

In return for the following agreement, signed by Glenn Futrell - Member Manager, Impact Properties Group, LLC, we desire to remove our signatures from the valid protest petition filed in reference to P.U.D. Case #01- REZ-22.

The agreement consists of the following 13 points, a certified survey map of the Common Open Space Buffer created by point #4, and a conceptual map showing the agreed upon road layout of the Highcroft PUD.

01-REZ-22 Highcroft PUD
"The Reserve" Adjacent Landowners & Reserve Homeowners

- 1) Clear cutting of the existing SF-3 wooded lots is prohibited by the Developer of Highcroft. Each builder will be required to obtain developer approval prior to the start of construction. The expected clearing limits used would be to remove any trees within 15' of the sides of the foundation, 20' in the front and 30' in the rear unless said limits encroach into buffers or deed restricted areas. The main intent would be to accommodate the future house, driveway, provide an adequate backyard, and provide proper drainage. Clearing additional trees would be discouraged in the architectural review process and would only reduce the market value of the finished home.
- 2) Allowable uses within the SF-3 land parcel shall be limited to 110 single-family, detached residential homes.
 - a) 90% of the lots in SF-3 shall be larger than 12,000 square feet
 - b) Minimum square footage of dwelling units (finished and heated, excluding garages) of 2,700 square feet.
- 3) Minimum square footage of dwelling units (finished and heated, excluding garages) in SF-2 shall be 2700 sq ft. Minimum home size (finished and heated, excluding garages) in SF-1 and SF-4 shall be 2000 sq ft.
4. A Common Open Space (COS) will be cleaned up (dead plant material removed) and established along the eastern boundary of the SF-3 parcel between the Highcroft PUD and existing "The Reserve" lots. This COS will be installed prior to any disturbance of the SF-3 parcel:

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- a) A variable buffer strip (as shown on the attached map) shall be established and maintained along the eastern boundary of SF-3. This COS buffer is basically 20' wide North of Briardale and 35' wide South of Briardale. A triangular section has been added to the 35' wide strip to save additional trees.
 - b) This buffer strip shall remain undisturbed and have evergreen plant material planted and maintained along its western side. When installed, this plant material will be a minimum of 5 foot tall and placed at a maximum 10-foot interval.
 - c) During road construction a tree protection fence will be installed a minimum of 50 feet from "The Reserve" property line and a minimum of 10 feet from the COS.
- 5) SF-3 parcel lots abutting existing single-family lots of "The Reserve" shall have the following restrictions:
- a) All lots to have a minimum lot size of 12,000 square feet.
 - b) Minimum home size (finished & heated, exclusive of garages) of 3,000 square feet.
 - c) Building set-back (as defined by Town of Cary Code) will be minimum of 80 feet from "The Reserve" property line.
 - d) The maximum front setback (as defined by Town of Cary Code) shall be 35'.
 - e) An undisturbed, protected area will be established for all land within 50' of the Reserve Property line if such land is not already contained within the Common Open Space (COS) established in section 4. This land shall be protected through deed restrictions to prevent tree clearing on the lots bordering "The Reserve".
6. The proposed Highcroft SF-3 subdivision will be subject to substantially similar covenants (land use restrictions, appearance and architectural restrictions) as "The Reserve". Highcroft's protective covenants will be written by Harold Russell, the same attorney that did The Reserve's covenants.
7. To decrease the impact of the associated problems, IPG, if allowed by the Town of Cary, will make the Briardale connection in Phase 2 of the Highcroft infrastructure construction. This would delay the Briardale connection approximately 1 year and give the construction traffic a significant period to establish and get used to using Sears Farm as a new route. After construction a barricade would be installed across Briardale and left in place as long as the Town will allow it.
- To further ease the traffic concerns IPG would be willing to pay "The Reserve" HOA's contribution (within a reasonable period of time after approval of the Highcroft Subdivision by the Town of Cary) toward the construction of the speed humps on Edgemore & Briardale Avenues. Should the Town of Cary not have sufficient funds available in its budget within two years of approval, the developer also commits to pay the City's portion of the costs to install Speed humps on both Briardale and Edgemore.
8. All Road improvements to Sears Farm, Green Hope School, and NC 55 associated with the Highcroft PUD would be constructed in conjunction with Phase 1 of Highcroft.

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9. No Highcroft construction traffic will utilize the roads within "The Reserve". A mutually agreed upon implementation plan will be developed to achieve this, and modified as necessary. Impact Properties Group will work with their builders and subcontractors to assure that our construction traffic does not use "The Reserve" as a cut through. The items offered in #7 will also help with this effort.
10. MR-1 tract of proposed town homes has been changed to SF-4, a continuation of the cluster lots in SF-1. The price point of the neighborhood will range from \$275,000-\$375,000 for cluster homes and \$375,000 and up for SF-3.
11. The parties stipulate and agree that any breach of this Agreement will necessarily cause irreparable harm and damage to the non-breaching party for which there is not an adequate remedy at law and, therefore, that the non-breaching party shall be entitled, without limiting its remedies, to injunctive relief in the event of a breach of this Agreement. The parties further stipulate and agree that should a party to this Agreement prevail in any litigation arising out or relating to any breach or alleged breach of this Agreement, such prevailing party shall be entitled to recover, without limitation, its reasonable attorney's fees. This Agreement shall inure to the benefit of the owners of the real property affected by this Agreement, as described above, and their respective successors and assigns, including each and every person, firm or corporation acquiring any right, title or interest in any of the real property affected by this Agreement.
12. Impact Properties Group, LLC will comply with this agreement by one of the following means (a different means may be used for different provisions):
 - A.) Inclusion of the provision in the P.U.D. provisions on file with the Town of Cary
 - B.) Inclusion in the Restrictive Covenants for the applicable phase or section of Highcroft P.U.D. with appropriate delineation on the recorded plat for such phase or section.
 - C.) Inclusion in written binding contractual agreements with engineers, surveyors, builders, and realtors.
13. This agreement is binding on the successors and assigns of Impact Properties Group, LLC.

In exchange for the compromises we have made to our street layout, the phasing of construction, lot sizes, home sizes, price points, final product lines, neighborhood density, and tree protection buffers we expect the following to occur:

1. The protest petition from the adjacent landowners would be formally withdrawn from the Town of Cary through the Town's process for doing so. To do this a letter would need to be written and signed by the majority of the original protesting parties indicating that an acceptable agreement had been reached between the adjacent landowners and Impact Properties Group, LLC and that they now desire to remove the protest petition. The letter will need to reference the Highcroft P.U.D. case # 01-REZ-22 and be filed with the Town of Cary Clerk's office.

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Initial

2. The Board of The Reserve HOA will write a letter to the Town of Cary indicating that two members of the Board were involved in the negotiations with the Developer of Highcroft P.U.D. and the Board is in agreement with the final formal agreement.

Glenn Futrell 3-4-02
 Glenn Futrell Date
 Member Manager
 Impact Properties Group, LLC

.....

Benton D. Brooks
 Benton D. Brooks - 204 Cakebread Ct.

Kimberly W. Brooks
 Kimberly W. Brooks - 204 Cakebread Ct.

Hubert Franklin Nanney
 Hubert Franklin Nanney - 205 Cakebread Ct

Heather Hunt Nanney
 Heather Hunt Nanney - 205 Cakebread Ct.

Michael Caricato
 Michael Caricato - 203 Cakebread Ct.

Nina Caricato
 Nina Caricato - 203 Cakebread Ct.

Mark L. Ventura
 Mark L. Ventura - 102 Tavernelle Pl.

Maureen L. Ventura
 Maureen L. Ventura - 102 Tavernelle Pl.

Steven T. Monroe
 Steven T. Monroe - 104 Tavernelle Pl..

Betsy P. Monroe
 Betsy P. Monroe - 104 Tavernelle Pl..

Guy Chadwick
 Guy Chadwick - 106 Tavernelle Pl.

Debra G. Chadwick
 Debra G. Chadwick - 106 Tavernelle Pl.

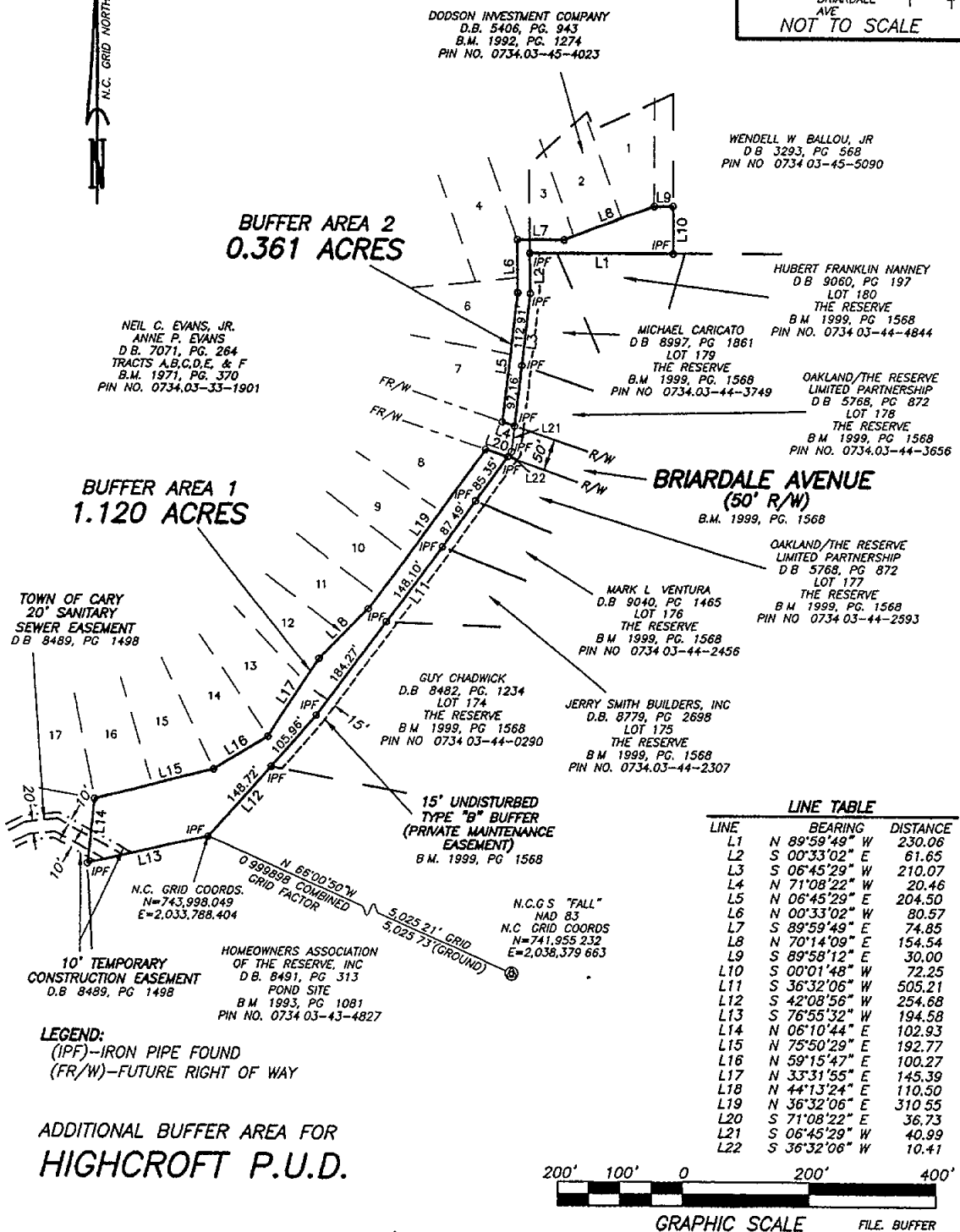
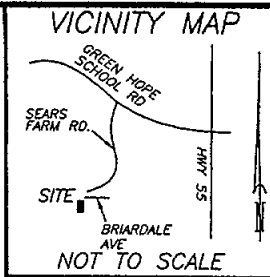
Tom Nicholas
 Tom Nicholas - President
 Homeowners Association of the Reserve, Inc
 Parcel # 073403434827

Tom Nicholas
 Tom Nicholas - President HOA (on behalf of)
 Homeowners Association of the Reserve, Inc.

Initial G.F.

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

NOTE:
LOTS 1-17 ARE PRELIMINARY LOTS FOR HIGHCROFT PUD TAKEN FROM A CAD FILE PROVIDED BY JERRY TURNER AND ASSOCIATES.



I, **MICHAEL D. GOODFRED**, CERTIFY THAT THIS MAP IS THE RESULT OF A FIELD SURVEY MADE UNDER MY SUPERVISION, THAT THE ERROR OF CLOSURE IS 1:45,485+ THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES. WITNESS MY HAND AND SEAL THIS 4th DAY OF MARCH, A.D., 2002.

MICHAEL D. GOODFRED
PROFESSIONAL LAND SURVEYOR L-3278



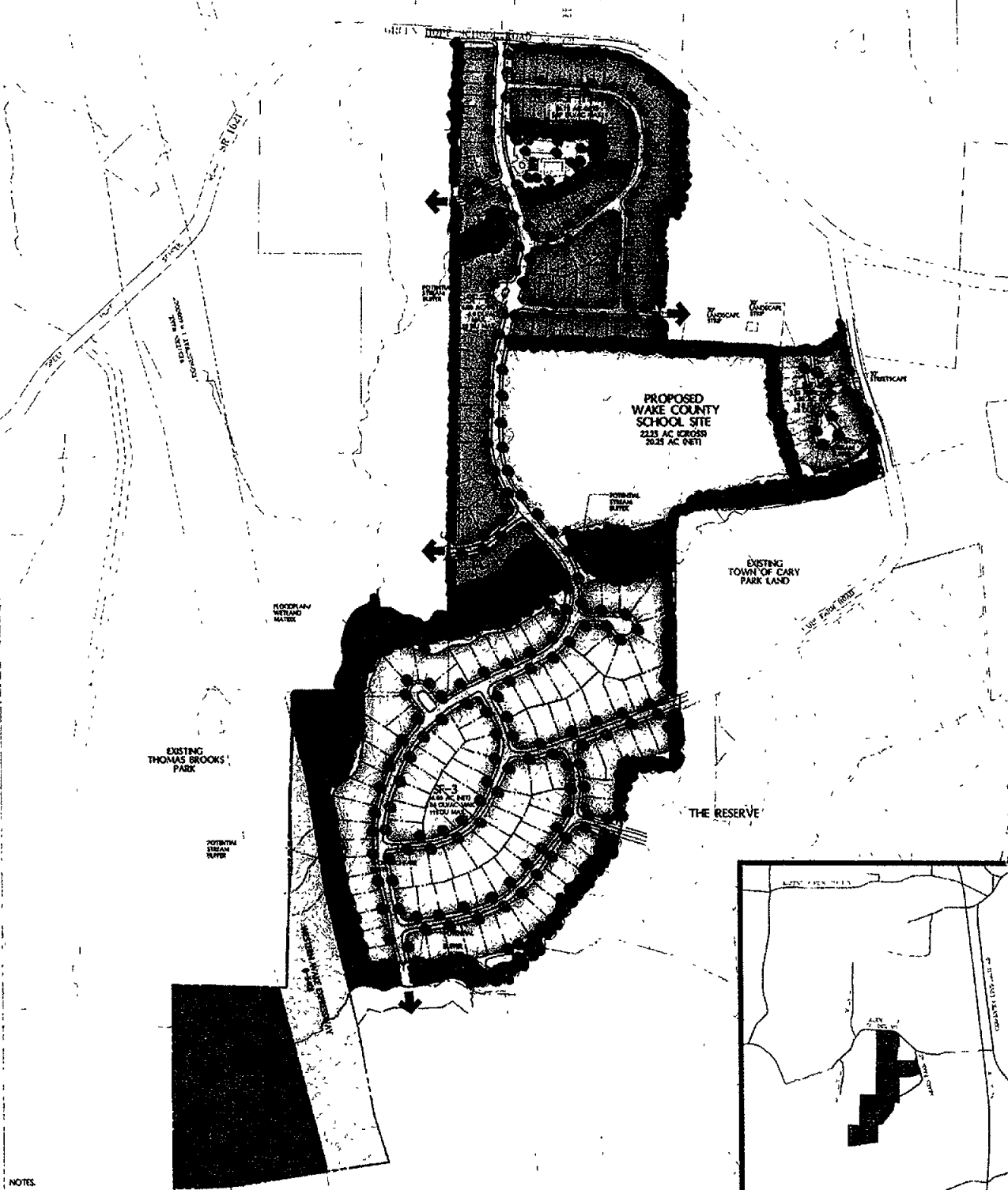
KENNETH CLOSE INC.
LAND SURVEYING
970 TRINITY ROAD
RALEIGH, N.C. 27607
PHONE (919) 851-2344
FAX (919) 851-5201

DATE: 3-4-02 SCALE: 1"=200'

EXHIBIT D
CONCEPTUAL MASTER PLAN FOR HIGHCROFT P.U.D.

NOTE: THIS CONCEPTUAL MASTER PLAN IS SUBJECT TO REVISION AT ANY TIME AND FROM TIME TO TIME IN THE DISCRETION OF DECLARANT AND UPON COMPLIANCE WITH LEGAL REQUIREMENTS.

EXHIBIT D - CONCEPTUAL MASTER PLAN FOR HIGHCROFT P.U.D.

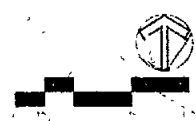


NOTES:
 1. PARCEL BOUNDARIES & ACRES ARE APPROXIMATE
 2. UNLESS OTHERWISE NOTED, PARCEL ACRES ARE EXCLUSIVE OF STREAM BUFFER, COMMON OPEN SPACE, & STREETScape
 3. TOPOGRAPHY & BOUNDARY INFORMATION TAKEN FROM WAKE COUNTY GIS

PRELIMINARY MASTER PLAN
 HIGHCROFT PLANNED UNIT DEVELOPMENT

FEBRUARY 12, 2002

1"=200'



Planning, Architecture,
 Land Planning,
 Environmental Design
 2044 North ...
 Raleigh, NC ...

THIS PLAN IS AN ILLUSTRATIVE CONCEPT AND IS SUBJECT TO CHANGE

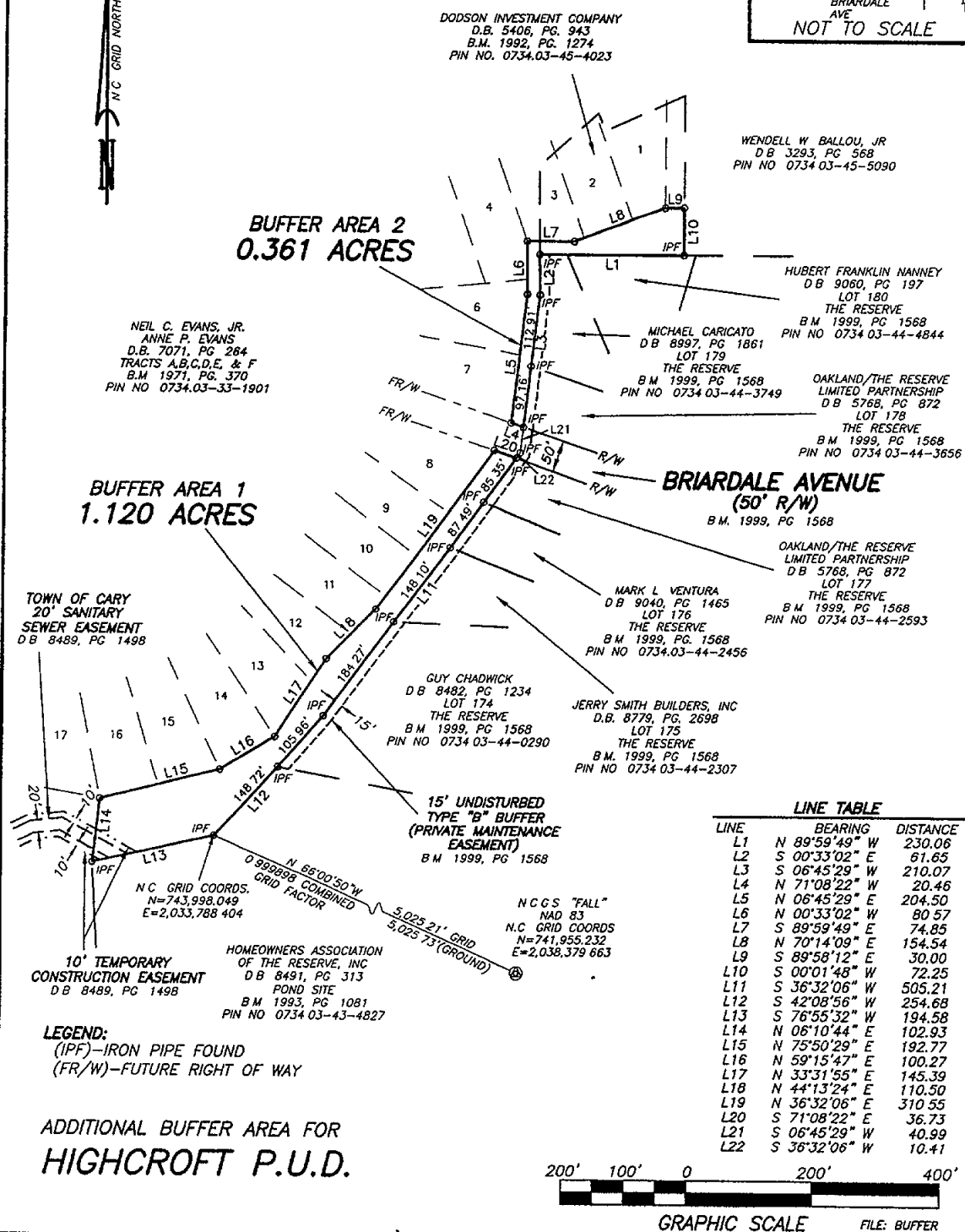
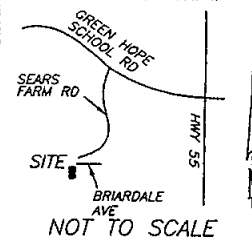
EXHIBIT E
ADDITIONAL BUFFER AREA FOR HIGHCROFT P.U.D.
Kenneth Close, Inc. Survey Dated 3-4-02

EXHIBIT E

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

NOTE:
LOTS 1-17 ARE PRELIMINARY LOTS FOR
HIGHCROFT PUD TAKEN FROM A CAD FILE
PROVIDED BY JERRY TURNER AND ASSOCIATES.

VICINITY MAP



I, MICHAEL D. GOODFRED, CERTIFY THAT THIS MAP IS THE RESULT OF A FIELD SURVEY MADE UNDER MY SUPERVISION, THAT THE ERROR OF CLOSURE IS 1:45,485+ THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES. WITNESS MY HAND AND SEAL THIS 4th DAY OF MARCH A.D., 2002.

PROFESSIONAL LAND SURVEYOR L-3278



KENNETH CLOSE INC.
LAND SURVEYING
970 TRINITY ROAD
RALEIGH, N.C. 27607
PHONE (919) 851-2344
FAX (919) 851-5201

DATE: 3-4-02

SCALE: 1"= 200'

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 010152 Page : 00605 - 00698

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



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

North Carolina - Wake County

The foregoing certificate S of Mary A Riles

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

Laura M. Riddick, Register of Deeds

By: Janet Morgan
Assistant ~~Deputy~~ Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
94 New Time Stamp
_____ # of Pages